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No. \_\_\_\_\_

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In the

**Supreme Court of the United States**

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**CHRISTOPHER BURNELL**, Petitioner

v.

**UNITED STATES OF AMERICA**, Respondent

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On Petition for a Writ of Certiorari to the  
United States Court of Appeals  
for the Ninth Circuit

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**Appendix to Petition for a Writ of Certiorari**

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**NOT FOR PUBLICATION**

**FILED**

UNITED STATES COURT OF APPEALS

OCT 2 2024

FOR THE NINTH CIRCUIT

MOLLY C. DWYER, CLERK  
U.S. COURT OF APPEALS

UNITED STATES OF AMERICA,

No. 22-50201

Plaintiff-Appellee,

D.C. No.

v.

5:17-cr-00278-MWF-1

CHRISTOPHER LLOYD BURNELL,

MEMORANDUM\*

Defendant-Appellant.

Appeal from the United States District Court  
for the Central District of California  
Michael W. Fitzgerald, District Judge, Presiding

Argued and Submitted May 17, 2024  
Pasadena, California

Before: COLLINS, H.A. THOMAS, and JOHNSTONE, Circuit Judges.  
Concurrence by Judge COLLINS.

Christopher Burnell appeals the sentence imposed following his guilty plea to committing wire fraud and filing false income tax returns. We have jurisdiction under 28 U.S.C. § 1291 and 18 U.S.C. § 3742(a). We affirm.

1. Burnell challenges the district court’s denial of his motion to substitute counsel. “We review a district court’s denial of a motion for substitution of counsel

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\* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

for abuse of discretion.” *United States v. Rivera-Corona*, 618 F.3d 976, 978 (9th Cir. 2010) (citing *United States v. Adelzo-Gonzalez*, 268 F.3d 772, 777 (9th Cir. 2001)). When a defendant seeks to replace retained counsel with appointed counsel, and “the defendant is financially qualified,” the request must be granted “unless a contrary result is compelled by ‘purposes inherent in the fair, efficient and orderly administration of justice.’” *United States v. Brown*, 785 F.3d 1337, 1340 (9th Cir. 2015) (quoting *Rivera-Corona*, 618 F.3d at 979). Burnell waited until his sentencing hearing to request substitution of counsel. As the district court recognized, substitution at such a late stage would have inevitably caused significant delay and required victims to reschedule travel to be present. We can also “infer from the record,” *Brown*, 785 F.3d at 1347, that the district court was familiar with Burnell’s delay tactics to receive continuances, and that the district court was properly concerned that Burnell might well be using the motion to delay proceedings. Under these circumstances, the district court did not abuse its discretion in denying Burnell’s substitution motion.

2. Burnell challenges the district court’s inclusion of relevant conduct in its loss calculation. Because Burnell did not object to his sentence below, we review for plain error. *United States v. Halamek*, 5 F.4th 1081, 1087 (9th Cir. 2021). Where, as here, an offense level is “largely” determined by “the total amount of harm or loss,” U.S. Sent’g Guidelines Manual (“U.S.S.G.”) § 3D1.2(d) (U.S.

Sent’g Comm’n 2021), courts may consider for sentencing purposes “all acts and omissions” by the defendant “that were part of the same course of conduct or common scheme or plan as the offense of conviction,” U.S.S.G. § 1B1.3(a)(2).

Despite the possible lack of “temporal proximity” given the seventeen-year span of Burnell’s fraudulent conduct, there is “sufficient similarity” between Burnell’s conduct “to reasonably suggest that” Burnell’s “repeated instances of criminal behavior constitute a pattern of criminal conduct.” *United States v. Hahn*, 960 F.2d 903, 910 (9th Cir. 1992) (quoting *United States v. Santiago*, 906 F.2d 867, 872 (2d Cir. 1990)). Burnell used the same or similar fraudulent misrepresentations as alleged in the indictment, with each of his victims. Further, Burnell specifically disclaimed any factual errors in the Presentence Investigation Report (“PSR”) to the district court. The district court did not plainly err in including all the victims’ losses as relevant conduct in the loss calculation.

3. Burnell challenges the sufficiency of the evidence for the four-level enhancement under U.S.S.G. § 2B1.1(b)(2)(B) for substantial financial hardship to five or more victims. Because Burnell did not object to the sentencing enhancement below, we review for plain error. *Halamek*, 5 F.4th at 1087. Burnell does not sufficiently challenge the harm to seven of the ten victims who formed the basis of the enhancement. Accordingly, he fails to show the district court plainly erred in applying the substantial-financial-harm sentencing enhancement.

4. Burnell challenges the sufficiency of the evidence for the two-level enhancement for a vulnerable victim under U.S.S.G. § 3A1.1(b)(1), but did not meaningfully challenge the inclusion of one of the vulnerable victims that support this enhancement. Thus, the district court did not abuse its discretion in applying this enhancement. *See United States v. Lonich*, 23 F.4th 881, 910 (9th Cir. 2022).

5. Burnell challenges the district court's calculation of the loss amount. Because Burnell did not object to the loss calculation, we review for plain error. *United States v. Depue*, 912 F.3d 1227, 1232 (9th Cir. 2019) (en banc). According to the Sentencing Guidelines, an 18-level enhancement is appropriate where the loss amount is more than \$3,500,000 but less than \$9,500,000. U.S.S.G. § 2B1.1(b)(1)(J). The total loss amount calculated was \$7,592,491.90. Burnell not only did not object to the PSR but even conceded its facts, so he cannot show the district court plainly erred in relying on the PSR to determine the loss amount.

6. Finally, Burnell challenges the district court's calculation of restitution. We review for plain error because Burnell first raises the challenge on appeal. *See United States v. Begay*, 33 F.4th 1081, 1096 (9th Cir. 2022) (en banc). The district court must order restitution to victims, defined as "person[s] directly and proximately harmed . . . by the defendant's criminal conduct in the course of the scheme." 18 U.S.C. § 3663A(a)(1), (2). Again, Burnell did not contest the PSR, which contained the restitution award. *See Begay*, 33 F.4th at 1097 (citing Fed. R.

Crim. P. 32(i)(3)(A)). Unlike in *Begay*, the restitution award in this case was not predicated on damage that would have required more specific calculations under § 3663A such as damage to property or bodily injury. *See* 18 U.S.C. § 3663A(b). Accordingly, the district court did not plainly err in relying on the uncontested PSR.

**AFFIRMED.**

FILED

*United States v. Burnell*, No. 22-50201

OCT 2 2024

MOLLY C. DWYER, CLERK  
U.S. COURT OF APPEALS

COLLINS, Circuit Judge, concurring:

I concur in the court's memorandum disposition. I write separately only to add some additional explanation as to why I think that Burnell's last-minute motion to substitute counsel was properly denied.

On the day he was to be sentenced, Burnell sought *both* to withdraw his plea of guilty and to discharge his retained counsel. The district court denied both motions. Although Burnell on appeal does not challenge the district court's denial of his motion to withdraw his guilty plea, I think that the district court's disposition of that motion helps to elucidate why there was no abuse of discretion in the court's denial of the requested substitution of counsel as well.

The gravamen of Burnell's motion to withdraw his plea was that he had been misled into pleading guilty and that he was unaware, at the time of his plea, that he could be held responsible for as much financial loss, and sentenced to as much prison time, as the Government was recommending. The district court did not abuse its discretion in declining to allow Burnell to withdraw his plea. *United States v. Garcia*, 909 F.2d 1346, 1348–49 (9th Cir. 1990). Burnell's professed ignorance as to the consequences of his plea was belied by his plea colloquy, in which he clearly indicated his understanding that he was not entitled to any particular sentence and that he could be exposed to a greater-than-expected



sentence based on harms to additional victims.

We have held that, when a request to replace retained counsel with appointed counsel implicates “the scheduling demands of the court,” the district court must consider the traditional factors for assessing “the defendant’s reason for requesting substitution” and weigh those against the court’s scheduling concerns. *United States v. Rivera-Corona*, 618 F.3d 976, 980 (9th Cir. 2010). Where, as here, the requested substitution is based on an asserted conflict with current counsel, the district court must (1) consider “the timeliness of the substitution motion and the extent of resulting inconvenience or delay”; (2) adequately inquire “into the defendant’s complaint”; and (3) consider “whether the conflict between the defendant and his attorney was so great that it prevented an adequate defense.” *Id.* at 978.

Because the district court correctly rejected Burnell’s motion to withdraw his plea, all three factors favored denying Burnell’s motion to substitute counsel. Burnell’s day-of-sentencing request would have substantially delayed the proceedings. Burnell already had changed his counsel on multiple occasions in his case, raising a reasonable concern that his latest motion was merely a strategic bid to put off facing the consequences of his crimes. The district court conducted an adequate inquiry into the conflict, which revealed that the only basis for Burnell’s substitution bid was his groundless assertion that he had not been apprised of the

consequences of his plea. Burnell’s attorney, for his part, told the court that Burnell had refused to cooperate with his efforts to prepare a sentencing position. Burnell’s “general unreasonableness or manufactured discontent” toward his counsel did not furnish a valid basis for substitution. *United States v. Mendez-Sanchez*, 563 F.3d 935, 944 (9th Cir. 2009) (citation omitted).

With these additional observations, I concur in the court’s memorandum.

1  
2 UNITED STATES DISTRICT COURT  
3 CENTRAL DISTRICT OF CALIFORNIA - WESTERN DIVISION  
4 HONORABLE MICHAEL W. FITZGERALD, U.S. DISTRICT JUDGE  
5

6 UNITED STATES OF AMERICA, )  
7 )  
8 Plaintiff, )  
9 vs. ) 5:17-CR-278-MWF  
10 CHRISTOPHER LLOYD BURNELL, )  
11 Defendant. )  
12 )  
13 )  
14 )  
15 )

16 REPORTER'S TRANSCRIPT OF SEALED HEARING

17 Los Angeles, California

18 Tuesday, August 30, 2022  
19  
20

21  
22 AMY DIAZ, RPR, CRR, FCRR  
23 Federal Official Reporter  
24 350 West 1st Street, #4455  
25 Los Angeles, CA 90012

*Please order court transcripts here: [www.amydiazfedreporter.com](http://www.amydiazfedreporter.com)*

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214:10:41 (At the bench.)

314:10:41 THE COURT: All right. We are side bar in camera.

414:10:44 This portion of the transcript will be sealed unless and

514:10:47 until the Court orders otherwise.

614:10:50 And I'll give you a chance to tell me directly,

714:10:54 Mr. Burnell, but first, let me hear from Mr. Berk.

814:10:58 So what is the basis for this?

914:11:00 MR. BERK: Thank you. My understanding is that

1014:11:02 Mr. Burnell feels that I forced him, cajoled him into

1114:11:09 entering into this plea; that he is not guilty of the acts as

1214:11:16 alleged in the Indictment. And I think that is the gist of

1314:11:24 Mr. Burnell's feeling.

1414:11:26 So that kind of puts me in a bind, Your Honor.

1514:11:29 Obviously, we are in court, open court.

1614:11:34 THE COURT: And, Mr. Burnell, is that -- what would  
1714:11:36 you like to tell me about why you want to withdraw your plea?

1814:11:40 THE DEFENDANT: My biggest thing, Your Honor, is I  
1914:11:42 have been everywhere I'm supposed to be, when I'm supposed to  
2014:11:44 be here with you, Pretrial, everybody.

2114:11:46 When he told me to do the open plea, he says the  
2214:11:48 best thing for me -- my ex-wife was supposed to come testify,  
2314:11:50 my daughter. I was trying to shield them from doing all  
2414:11:51 that. But I never once knew at any time that I was pleading  
2514:11:54 to \$7.5 million, and I was looking at 15 to 20 years in

114:11:59 prison. I was told that I was open pleading to 13 counts in  
214:12:02 the Indictment, which I took responsibility for, of the  
314:12:05 \$570,000 in the Indictment. I never knew that other money.  
414:12:08 I never received that other money. That is horse -- I'm  
514:12:11 sorry -- that is wrong, and I did not receive that money.  
614:12:13 And I shouldn't spend 15, 20 years, or even 86 months in  
714:12:18 prison for something I didn't get or do. I thought I did the  
814:12:20 open plea with the 13 counts, which I was taking  
914:12:26 responsibility, but for not for 7.2 million, or \$10 million,  
1014:12:28 or any of this other stuff that is going on.

1114:12:31 I have been trying to withdraw. I didn't want to  
1214:12:33 wait until the last minute. I didn't want to put a burden on  
1314:12:37 the Court or people coming from out of state.

1414:12:39 MR. BERK: And we did have a conversation that, you  
1514:12:40 know, he was pleading guilty to the substantive counts, but  
1614:12:43 the loss amount the Court would determine at sentencing.

1714:12:47 And now I tried to resolve this issue, explaining to  
1814:12:52 Mr. Burnell how all this works in the past, and right now,  
1914:12:56 but it seems like that we are at an impasse.

2014:13:04 THE DEFENDANT: And I have been trying to do the  
2114:13:05 withdrawal of the plea. I did not want to wait until the  
2214:13:08 last minute. I have been trying to do that, because I know  
2314:13:10 there is people coming here. And I didn't want to wait until  
2414:13:13 the last minute. I don't want this Court to think, the  
2514:13:15 people, or the prosecutor to think that I'm trying to kick

114:13:19 the can down the road. I'm not. I didn't do an open plea  
214:13:22 for \$7.5 million. I had never heard that number before.

314:13:25 THE COURT: All right. I -- well, the rest, I  
414:13:34 understand that.

514:13:34 Mr. Burnell, the fact that you are saying this here  
614:13:38 will not affect your sentence. There is so many reasons for  
714:13:41 me to give you a harsh sentence, I hardly need to rely on  
814:13:47 this. But the fact is, is that -- well, I can express myself  
914:13:53 without revealing what it is that you said here.

1014:13:57 And I'll -- so we'll go back on the record, and I'm  
1114:14:00 going to deny your motion, and I'll explain why, but the fact  
1214:14:05 is that we are going to proceed with the sentencing.

1314:14:07 But the thing is, there is two things here: One is,  
1414:14:10 is that you will be able to raise this with the Court of  
1514:14:13 Appeals, because you have every right to appeal, I told you  
1614:14:17 that. You can appeal not only the sentence I'm going to give  
1714:14:19 you, but you can also appeal my denying this motion.

1814:14:22 And the other thing is that you have the right to  
1914:14:27 say that there was such a breakdown in the relationship with  
2014:14:33 you and Mr. Berk that, in essence, Mr. Berk was committing  
2114:14:37 malpractice; and therefore, you should have it vacated.

2214:14:40 That is not something -- that really gets into all  
2314:14:42 the nitty-gritty between the two of you, and I think that is  
2414:14:45 something that is better done on this.

2514:14:47 So I'm going to go forward with the sentencing

114:14:49 today. And then it's just a matter that it can be dealt with  
214:14:52 in two ways: One is the denial of the motion from the Court  
314:14:59 of Appeals -- I mean, the review of my denial by the Court of  
414:14:59 Appeals.

514:15:01 And then second is your ability to just have the  
614:15:07 entirety of your relationship with Mr. Berk examined in  
714:15:12 detail in a motion that you file after sentencing.

814:15:16 Now, whether that will happen during the appeal,  
914:15:20 after the appeal, in some ways it's up to Court of Appeals to  
1014:15:26 decide that, but in any event, it's something that is open to  
1114:15:28 you.

1214:15:30 But let me express -- let me express my thoughts in  
1314:15:34 open court.

1414:15:35 THE DEFENDANT: Can I ask one more question? I don't  
1514:15:37 know whether you are allowed to tell me or not. Obviously,  
1614:15:40 you are going to sentence me, and I understand that, and I  
1714:15:41 appreciate your time. My thing is, is this something you are  
1814:15:44 going to take me today, or am I going to get time?

1914:15:47 THE COURT: I want both sides to be heard on that.  
2014:15:49 I'm prepared to remand you today, but I want to hear the  
2114:15:54 arguments on both sides before I make up my mind on that. So  
2214:15:57 to let you know, it is something I am considering, but it's  
2314:16:00 not something on which I have made up my mind.

2414:16:04 MR. BERK: And, Your Honor, again, with respect to  
2514:16:05 our sentencing position, you know, my relationship with



114:16:08 Mr. Burnell is, I can't even formulate a sentencing position  
214:16:12 that is coherent, because we are not on the same page. I --  
314:16:19 I try to get records from him, I can't get it. We can't even  
414:16:25 discuss a sentencing position because I just didn't do it,  
514:16:28 and that is the answer.

614:16:30 THE COURT: Okay.

714:16:31 MR. BERK: So it's very difficult for me to --

814:16:33 THE COURT: Well, again, I --

914:16:36 MR. BERK: And that is why we didn't file one. I  
1014:16:38 have never not filed a sentencing position.

1114:16:40 THE COURT: Right. And I -- we will -- I understand  
1214:16:45 what it is that you are saying, and I -- but I'm -- we will  
1314:16:54 go forward with the sentencing. There is issues here that  
1414:16:57 you can certainly raise.

1514:16:59 Look, there is only -- there is a certain matters  
1614:17:01 for leniency, I recognized in reading the report, you are  
1714:17:05 free to raise them with me. You are free to see what the  
1814:17:08 government says in response. And we'll have the regular sort  
1914:17:11 of sentencing the way we would in any other case.

2014:17:14 And I will -- I understand your comment on that. So  
2114:17:19 I will -- again, it could be that the Ninth Circuit will just  
2214:17:25 say that I have made a mistake, and that I should have  
2314:17:28 granted -- if not necessarily granted the motion, I should  
2414:17:31 have allowed there to be a hearing on Mr. Burnell's  
2514:17:33 allegations and postpone the sentencing. I don't intend to

114:17:37 do that, and it will be subject to an appeal. And the Court  
214:17:40 of Appeals will tell me whether I made a mistake or not,  
314:17:43 which they certainly have no -- it's certainly their right,  
414:17:45 and they have no problems doing so.

514:17:47 So that is how we will proceed.

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8 I certify that the foregoing is a correct transcript from the  
9 record of proceedings in the above-titled matter.

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15 Amy C. Diaz, RPR, CRR

July 13, 2023

16 S/ Amy Diaz

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UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA - WESTERN DIVISION

HONORABLE MICHAEL W. FITZGERALD, U.S. DISTRICT JUDGE

UNITED STATES OF AMERICA, )

Plaintiff, )

vs. )

CHRISTOPHER LLOYD BURNELL, )

Defendant. )

5:17-CR-278-MWF

REPORTER'S TRANSCRIPT OF HEARING

Los Angeles, California

Tuesday, August 30, 2022

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Federal Official Reporter  
350 West 1st Street, #4455  
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*Please order court transcripts here: [www.amydiazfedreporter.com](http://www.amydiazfedreporter.com)*

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114:05:45 THE CLERK: Calling item number 4, case number  
214:05:53 EDCR-17-278-MWF, United States of America vs. Christopher  
314:06:00 Lloyd Burnell.

414:06:01 Counsel, rise and state your appearance for the  
514:06:03 record.

614:06:03 MR. TRISOTTO: Good afternoon, Your Honor. Robert  
714:06:05 Trisotto for the United States. At counsel table with me is  
814:06:08 IRS Special Agent Chris Seymour, and in the gallery are seven  
914:06:12 victims from the case, including Scott Beard, Kyle Larick,  
1014:06:17 Carolee Reiling, Michael Reiling, Larry Dickenson, Domenic  
1114:06:22 Scolieri and John Thornes.

1214:06:23 THE COURT: Good afternoon, Counsel and Special  
1314:06:28 Agent. Good afternoon, ladies and gentlemen.

1414:06:32 MR. BERK: Good afternoon, Your Honor. Elon Berk on  
1514:06:36 behalf of Mr. Burnell, who is present, Your Honor.

1614:06:38 THE COURT: Good afternoon, Mr. Berk, and good  
1714:06:41 afternoon, Mr. Burnell.

1814:06:42 Mr. Berk, I understand that there is a, before we go  
1914:06:45 to sentencing, that there is a preliminary matter that you  
2014:06:50 would like to raise with the Court.

2114:06:53 MR. BERK: That's correct, Your Honor.

2214:06:55 THE COURT: All right. And that is?

2314:06:59 MR. BERK: Well, Your Honor, my client advised me  
2414:07:01 that he would like to withdraw his previous plea in this case  
2514:07:07 and have a public defender assigned to represent him. He no

114:07:14 longer wishes that I continue to represent him.

214:07:16 THE COURT: All right. Mr. Burnell, is that  
314:07:18 correct?

414:07:21 THE DEFENDANT: Yes, Your Honor.

514:07:22 THE COURT: You can -- for now, the two of you can  
614:07:26 be seated.

714:07:26 In terms of appointing new counsel, since Mr. Burke  
814:07:33 is retained, ordinarily he could be fired whenever you want.  
914:07:43 Of course, in a criminal case substitution of counsel does  
1014:07:46 require my consent. But as I did previously with you, I  
1114:07:53 would be inclined to grant it, assuming there was another  
1214:07:56 lawyer who could step in.

1314:08:00 Here, again, you've had a lawyer, your own retained  
1414:08:07 counsel that was chosen after you -- when you wanted to make  
1514:08:11 a change, so I'm not going to allow it for two reasons:

1614:08:17 One is applying the criteria that I would ordinarily  
1714:08:21 use if Mr. Berk had been appointed for you, I don't see a  
1814:08:28 basis for it. He's done a good job on the -- in keeping you  
1914:08:38 from being remanded when the government raised that issue.  
2014:08:43 He vigorously dealt with issues that were coming up since the  
2114:08:48 guilty plea was right on the eve of trial. And there just --  
2214:08:53 I just -- in the absence of something really extraordinary, I  
2314:08:58 just wouldn't see the basis for doing so.

2414:09:02 Here, if you had another lawyer who was willing to  
2514:09:06 step in and could represent to me that he or she would do a

114:09:10 decent job at sentencing, then even two weeks ago I would  
214:09:17 probably have allowed it, but here, the inevitable result of  
314:09:21 that, of course, is to delay the -- is to delay the  
414:09:27 sentencing.

514:09:27 Now, if the motion to withdraw your plea were to be  
614:09:36 granted, then there wouldn't be a sentencing.

714:09:39 So on that, Mr. Berk, Mr. Burnell -- Mr. Berk, I'm  
814:09:45 sure you must have some idea of why Mr. Burnell wants to do  
914:09:48 this. If you could present it in non-attorney-client terms  
1014:09:54 to me so on the record, and so the audience knows why the  
1114:10:00 motion is being made, then I'll allow you to -- the two of  
1214:10:04 you to approach and supplement that speaking to me in camera.

1314:10:08 But for now, Mr. Berk, what is the basis for the  
1414:10:14 request to withdraw the guilty plea?

1514:10:16 MR. BERK: Your Honor, I think it's quite difficult  
1614:10:19 to express it in terms that do not breach the attorney-client  
1714:10:26 privilege, but if we could have a quick in camera.

1814:10:29 THE COURT: All right. Then here, just approach  
1914:10:32 side bar, and let me hear specifically what the reasoning is.

2014:17:49 (Sealed.)

2114:17:49 (In open court:)

2214:17:57 THE COURT: We are now once again in open court.

2314:18:01 The request was made that the plea be withdrawn, and  
2414:18:13 also, that the sentencing be continued. I have denied both  
2514:18:20 requests.

114:18:21 Mr. Burnell is free to appeal both his sentence and  
214:18:27 the denial of his motion to withdraw his plea to the Court of  
314:18:33 Appeals who will determine whether those should have been  
414:18:36 granted or whether I should have conducted more investigation  
514:18:41 into the matter and postponed sentencing.

614:18:43 But I believe that there is sufficient evidence in  
714:18:49 the record, including Mr. Burnell's own sworn statements when  
814:18:57 he entered his guilty plea, it was all done under oath, and  
914:19:00 that is a sufficient basis for me to deny that request now.

1014:19:04 So we will proceed with sentencing.

1114:19:08 Mr. Berk, did the defense receive a copy of the  
1214:19:13 presentence report?

1314:19:15 MR. BERK: Yes, Your Honor.

1414:19:16 THE COURT: And was a copy provided to Mr. Burnell?

1514:19:21 MR. BERK: I discussed it with Mr. Burnell, Your  
1614:19:23 Honor.

1714:19:23 THE COURT: And are there any factual -- are there  
1814:19:33 any factual errors in the report? We'll get to the  
1914:19:37 Guidelines in a moment, but are there any factual errors in  
2014:19:40 the report that you want to bring to my attention?

2114:19:46 MR. BERK: No factual errors, Your Honor.

2214:19:47 THE COURT: Now, I'll say this to Mr. Burnell and  
2314:19:55 the victims here, the lawyers know perfectly well that the  
2414:20:00 way sentencing works in Federal Court is that there are  
2514:20:03 Sentencing Guidelines that recommend a sentence within a



114:20:08 certain range of months.

214:20:10           However, the Supreme Court has held that that  
314:20:15 recommendation is not binding on the sentencing judge;  
414:20:20 however, it must nonetheless be calculated accurately.

514:20:25           So the first part of what we will be doing here  
614:20:29 probably might strike you as -- might strike Mr. Burnell as  
714:20:33 somewhat strange, where it's almost like this calculus of,  
814:20:37 well, there is this matter, and there is that matter, but the  
914:20:41 law says that it must be done. And the result of that then  
1014:20:45 is to end up with this recommended sentence.

1114:20:48           Apart from that, then both sides have the right to  
1214:20:52 argue simply as to what they believe a just sentence would  
1314:20:55 be. And of course, on top of that, as you know, there are  
1414:20:59 the statements that I've heard, and then I understand that  
1514:21:02 there is -- that there is one further victim who wishes to be  
1614:21:15 heard, and after we settle the Guidelines, I'll allow that.  
1714:21:20 And then I'll allow counsel to just directly address what  
1814:21:23 really matters, which is what the sentence should be.

1914:21:27           Is there -- now, as to the Guidelines, the original  
2014:21:36 position of Probation was that while the loss amount was --  
2114:21:44 fell within a range of \$3.5 to \$9.5 million, that there  
2214:21:49 should be upward adjustments for five or more victims who  
2314:21:56 suffered substantial financial hardship, for the use of the  
2414:21:59 firearm as an intimidation tactic, that was mentioned by  
2514:22:04 several of the victims, as well, and then that there would be

114:22:08 a vulnerable victim.

214:22:13 So all of that ended up putting the Guidelines  
314:22:19 considerably higher than they otherwise would have been.

414:22:24 After hearing the government's position, Probation  
514:22:28 changed its mind, it agreed with the government, and it  
614:22:33 adopted the government's view to an extent.

714:22:37 So what that gives us is a base offense level of 7,  
814:22:43 a loss amount of 18 levels, substantial financial hardship,  
914:22:48 use of firearm, vulnerable victim, as I said, then a certain  
1014:22:54 adjustment because of the tax counts. The fact that  
1114:23:02 Mr. Burnell has accepted some responsibility, as evidenced by  
1214:23:04 his guilty plea, is a basis for an adjustment.

1314:23:10 So what it comes out to, essentially, is 31 months,  
1414:23:14 which is 108 to 135 months.

1514:23:18 So what then -- the government is asking for a much  
1614:23:28 harsher sentence on that for reasons, but we can deal with  
1714:23:31 those later.

1814:23:35 Right now, essentially the government's view,  
1914:23:37 Probation's adopted it, let me hear from the defense on how  
2014:23:42 the defense would want the Sentencing Guidelines treated in  
2114:23:47 this case.

2214:23:48 MR. BERK: Thank you, Your Honor.

2314:23:49 Does the Court want me up there?

2414:23:50 THE COURT: Yes.

2514:23:51 MR. BERK: Thank you, Your Honor.

114:23:55 I think the PSR had a pretty good summary of  
214:24:04 Mr. Burnell's history and characteristics, so there is no  
314:24:08 reason to rehash them, other than pointing out that he did  
414:24:14 not have a relationship with his father.

514:24:15 THE COURT: I understand that.

614:24:16 I mean, Mr. Berk, right now I'm just focused  
714:24:20 narrowly on the issue of the Sentencing Guidelines.

814:24:24 So if the -- for instance, on the use of -- do you  
914:24:31 wish to be heard on, say, the use of the firearm, or is there  
1014:24:37 anything else specific to the Guidelines?

1114:24:40 And after that, then I said we'll hear from any  
1214:24:42 victims who didn't speak last time. And then you will have  
1314:24:45 the opportunity to say whatever you wish in support of  
1414:24:49 Mr. Burnell.

1514:24:50 But right now I just want to focus on this issue of  
1614:24:53 the Sentencing Guidelines.

1714:24:54 MR. BERK: Okay. So as far as the Guidelines, we  
1814:24:57 would stipulate that 31 is the accurate --

1914:25:00 THE COURT: And I want to say that, Mr. Trisotto, it  
2014:25:03 seems to me you just got the math wrong here. When you were  
2114:25:07 saying a level 36, if you have 31 plus 4, it's 35. So...

2214:25:11 MR. TRISOTTO: Your Honor, you are correct. There  
2314:25:12 was an error in my math, which I realized after I filed it.  
2414:25:17 I adjusted -- I added a plus one for an adjustment, but once  
2514:25:21 you added the additional enhancements, it changed that.

114:25:23               So it should be a 35, you are correct. Thank you  
214:25:26               for noticing that.

314:25:27               THE COURT: So what we have, then, is what is -- let  
414:25:37               me first here just say a bit more, so there is more of a  
514:25:42               record. And both the government and Mr. Burnell can take  
614:25:45               this up.

714:25:45               It is true, Mr. Berk, that ordinarily there would  
814:25:52               have been something submitted by the defense in writing, and  
914:25:59               I expected that. I mentioned that when I gave the two-week  
1014:26:04              continuance. But I gave the two-week continuance.

1114:26:06              And the fact is, is that there -- I believe that  
1214:26:13              there has been plenty of time for that to happen. And that  
1314:26:17              there is a basis here in the record to be fair to both sides  
1414:26:21              because the presentence report does essentially give reasons  
1514:26:27              why Mr. Burnell is -- can be shown a certain amount of  
1614:26:35              leniency despite how heinous, isn't at all too strong a word,  
1714:26:43              the conduct was here. And you will have the ability to argue  
1814:26:45              that.

1914:26:46              I don't think that it is -- while it would have been  
2014:26:51              preferable clearly, it is not necessary for me to have  
2114:26:56              received that submission in writing; and therefore, at some  
2214:27:04              point it's -- it is not for either party to determine when  
2314:27:11              the sentencing is. A sentencing was set. There was a  
2414:27:15              postponement asked by the defense of two weeks. I gave a  
2514:27:18              postponement for two weeks. I'm simply not going to give

114:27:24 more time on this.

214:27:25 And you explained at side bar the reason for this.

314:27:27 I don't regard that as a sufficient reason, and we will

414:27:33 therefore proceed with sentencing.

514:27:35 But before I hear from the defense or the

614:27:40 government, Mr. Trisotto, I understand that there is another

714:27:43 victim who would like to address me who was not in a position

814:27:48 to do so two weeks ago.

914:27:50 MR. TRISOTTO: That's correct, Your Honor. Carolee

1014:27:52 Reiling, and she would -- her victim impact statement would

1114:27:56 be Exhibit F to the government's sentencing position.

1214:27:59 THE COURT: And let me say for anyone who is

1314:28:01 listening to this on the telephone, I'm certainly happy for

1414:28:06 you to do so, but you may not record this. Simply, you

1514:28:12 should be conducting yourselves as if you were here in court,

1614:28:16 and in court it's taken down by the court reporter. It isn't

1714:28:20 allowed to have a recording -- Zoom hearings aren't allowed

1814:28:25 to be recorded, and I'm ordering you not to record these

1914:28:29 proceedings.

2014:28:29 And moreover, I think that Ms. Reiling should feel

2114:28:35 that she is speaking here in court and not having a recording

2214:28:39 that can go out to the whole world.

2314:28:40 So with that, ma'am, please feel free to address me.

2414:28:47 MS. REILING: Okay. Hi. I'm Carolee Reiling. This

2514:28:50 is my brother, Mike Reiling. Our father, Ben Reiling, and

114:28:55 our mother and us is their sole living children. We are  
214:29:01 victims of Chris Burnell.

314:29:05 Should I read part of my statement? Is that okay?

414:29:08 THE COURT: Feel free to do that if that makes you  
514:29:11 comfortable.

614:29:12 MS. REILING: Sure.

714:29:12 So in roughly 2016 to 2018, my father, who was  
814:29:20 75-plus years old, and also known to Mr. Burnell to have  
914:29:25 active Alzheimer's disease, was robbed and deceived of  
1014:29:30 roughly \$1 million by Mr. Burnell.

1114:29:33 Even when Mr. Burnell was being pursued by the  
1214:29:38 authorities, even when I found out about what was going on  
1314:29:41 and talked to Mr. Burnell and made sure he was notified of  
1414:29:47 the Alzheimer's, which he told me he was already aware of, he  
1514:29:51 continued to fraudulently deceive my father and request  
1614:29:57 money, demand money, to the extent that I had to go to the  
1714:30:01 bank and have them basically freeze all of the bank accounts,  
1814:30:07 because my dad did have Alzheimer's. He did believe  
1914:30:11 Mr. Burnell. And it was just very difficult.

2014:30:15 Our father was self made. So he worked in a gas  
2114:30:19 station. Every penny he had, he made himself. But he had  
2214:30:24 people along the way that, you know, took care of him, and he  
2314:30:28 took care of them. He believed in the good of people.

2414:30:30 And I think he believed Mr. Burnell's stories. Even  
2514:30:35 when they were, you know, pretty outlandish. You know, he

114:30:41 was a former deputy sheriff.

214:30:44 This also not only financially did impact our  
314:30:48 family, but emotionally.

414:30:49 So when this happened, and I started digging into it  
514:30:54 with the bank, and discovered there was about close to a  
614:30:57 million dollars that had been in cash and checks and things  
714:31:02 like that, our mom, you know, basically got really mad at our  
814:31:08 dad and quit trusting him.

914:31:10 And it was kind of the beginning of the end. It  
1014:31:14 ruined the last couple of years of their marriage. He died  
1114:31:18 suddenly of a stroke, we believe, unexpectedly at home, very  
1214:31:22 suddenly.

1314:31:23 And it was just very heartbreaking. And our mom  
1414:31:27 never got over it, either. She had kind of lost her will to  
1514:31:31 live. She was very depressed. And cancer got her about  
1614:31:37 three years after our father. So we recently lost her  
1714:31:40 earlier this year.

1814:31:42 So we are the victims now, having inherited what is  
1914:31:47 left of their estate. And we know we won't get the money  
2014:31:50 back. But, you know, this man, if he's let free, you know,  
2114:31:56 he is just going to do this again and again.

2214:31:59 And he seems to have no remorse or compassion or any  
2314:32:05 regard for people.

2414:32:06 And we respectfully request that he be sentenced to  
2514:32:11 the maximum amount you would consider.

114:32:14 THE COURT: All right. Thank you. And I'm very  
214:32:16 sorry for the loss of both of your parents.

314:32:18 THE WITNESS: Thank you.

414:32:19 THE COURT: Yeah. Is there any other victim who  
514:32:22 hasn't had the opportunity to address me who would like to do  
614:32:25 so at this time?

714:32:27 MR. TRISOTTO: Your Honor, my understanding is that  
814:32:29 none of the other victims would like to address you. They  
914:32:32 all spoke to you last time. And unless -- my understanding  
1014:32:34 is no one else has anything they would like to continue to  
1114:32:37 add? No?

1214:32:38 Thank you, Your Honor.

1314:32:38 THE COURT: Thank you.

1414:32:40 Then as I said, the recommended sentence under the  
1514:32:49 Sentencing Guidelines is 108 to 135 months.

1614:32:58 The government has requested a sentence considerably  
1714:33:05 more than that. The reasoning was laid out in its sentencing  
1814:33:10 memorandum, which was filed on July 11th, I believe.

1914:33:20 MR. TRISOTTO: July 29th, Your Honor.

2014:33:24 THE COURT: July 29th.

2114:33:25 So the reasoning was laid out for the defense. But  
2214:33:36 let me -- yes, it's here, July 29th, correct.

2314:33:39 But let me -- and the presentence report, which has  
2414:33:44 been amended, as I said, was what was laid out was issued on  
2514:33:48 July 11th.



114:33:49 But just so Mr. Berk knows what it is, and clearly  
214:33:52 what he's arguing against, and please summarize the basis  
314:33:57 that the government has for believing that this sentence  
414:34:02 should be considerably in excess of what the Sentencing  
514:34:07 Guidelines are.

614:34:07 I assume the government believes the sentence should  
714:34:10 be 210 months as the upper end of the appropriate Guidelines  
814:34:18 range, in your view of adding on four levels.

914:34:21 MR. TRISOTTO: That's correct, Your Honor, after you  
1014:34:23 account for the miscalculation.

1114:34:24 THE COURT: So just explain without -- and I'll let  
1214:34:25 you argue afterwards -- but for right now, just state  
1314:34:30 succinctly the basis for requesting this upward variance.

1414:34:37 MR. TRISOTTO: Your Honor, so the upward variance is  
1514:34:40 based on a number of additional factors that aren't  
1614:34:43 incorporated into the Guidelines.

1714:34:45 And that would be, for example, the fact that  
1814:34:47 defendant abused a position of trust in facilitating these  
1914:34:52 offenses. I think front and center what you heard from all  
2014:34:54 of these victims is how he used his position as a former  
2114:34:58 deputy sheriff to earn their trust.

2214:35:00 And again, I won't argue, I'm just --

2314:35:03 THE COURT: So abuse of trust. And I understand why  
2414:35:08 you are saying that isn't part of it. So what besides --

2514:35:10 MR. TRISOTTO: In addition to that, you have the fact

114:35:12 of the sheer magnitude of the harm to the victims, and that  
214:35:16 is the big one, Your Honor. The fact of the matter is that  
314:35:18 you have -- again, sorry, I won't argue here -- but the  
414:35:22 magnitude of the harm to the victims, and as well as the  
514:35:27 vulnerability of the victims.

614:35:30 THE COURT: But there is a vulnerable victim  
714:35:32 adjustment here, and the magnitude in terms of just the sheer  
814:35:37 amount is reflected, in the government's view, of over the 7  
914:35:46 million.

1014:35:47 So what is it about -- exactly about the  
1114:35:50 circumstances here, in your view, that is not captured by  
1214:35:53 those adjustments under the Sentencing Guidelines?

1314:35:56 MR. TRISOTTO: Well, Your Honor, it goes to -- and  
1414:35:58 maybe vulnerable victims isn't the right word, because you  
1514:36:01 are right, that is captured separately by the plus-two. But  
1614:36:04 you have the way that defendant created these ongoing stories  
1714:36:08 and fabrications to appeal to, you know -- so, yes, you have  
1814:36:13 the people like who had Alzheimer's. That is clearly a  
1914:36:18 vulnerable victim. Somebody whose wife had cancer, and was  
2014:36:22 appealing to that sympathy there. But other people who  
2114:36:24 aren't necessarily vulnerable, by that meaning of having an  
2214:36:28 illness or a sickness, but let me give Your Honor an example.

2314:36:31 The example that defendant was being taken into  
2414:36:34 custody, and if he wasn't given, you know, 50, \$60,000  
2514:36:38 immediately, defendant was going to have to -- was going

114:36:43 to -- he was going to be basically put into custody for up to  
214:36:46 a year.

314:36:47 These constant stories and fabrications along the  
414:36:51 way that dragged the victims along. And I think it's -- I  
514:36:55 don't have a word for it to capture it all, but I give  
614:36:58 examples in my sentencing paper, you know, involving the  
714:37:02 child custody dispute.

814:37:03 THE COURT: I understand that.

914:37:03 So then there is the abuse of trust, there is the  
1014:37:07 nature of presenting himself in a way to particularly prey on  
1114:37:12 certain people, if I could summarize it that way.

1214:37:15 MR. TRISOTTO: That is better.

1314:37:16 THE COURT: What else is there in particular that  
1414:37:19 you feel is not captured by the Sentencing Guidelines to  
1514:37:24 justify the sentence of 210 months?

1614:37:28 MR. TRISOTTO: Your Honor, the big one I would focus  
1714:37:30 on is the magnitude of the harm to the victims. And I would  
1814:37:34 be more than happy to get into that, but I know Your Honor  
1914:37:37 said not to argue.

2014:37:37 THE COURT: So when you say "magnitude," that there  
2114:37:41 was the divorce, there was the loss of the college education,  
2214:37:43 there was the disruption of trust in the marriage, there was  
2314:37:47 the consequences to the victims beyond the sheer loss of  
2414:37:50 their money.

2514:37:51 MR. TRISOTTO: That's correct, Your Honor.

114:37:52 THE COURT: The loss of a second generation  
214:37:55 business.

314:37:55 MR. TRISOTTO: Maybe a better way to describe it is  
414:37:57 not -- so, yes, there is the financial hardship, which is  
514:38:00 accounted for, but then there is the personal hardship.  
614:38:03 There is the fact that there is these, as stated in the  
714:38:06 victim impact statement, they are haunted every day by all  
814:38:09 these events that have basically just cemented the rest of  
914:38:12 their lives based on these events.

1014:38:14 And that falls in a separate category, the personal  
1114:38:17 hardship category. And I cite to cases that support this  
1214:38:20 upward variance in my papers, Your Honor. And I apologize, I  
1314:38:23 don't mean to argue.

1414:38:24 THE COURT: So I think -- is there anything else  
1514:38:30 before we hear from the defense that you would like to say in  
1614:38:34 support of the upward variance?

1714:38:36 MR. TRISOTTO: Not at this time, Your Honor.

1814:38:38 THE COURT: Thank you.

1914:38:39 Mr. Berk, let me hear whatever it is that you would  
2014:38:42 like to say in support of Mr. Burnell.

2114:38:46 MR. BERK: Thank you, Your Honor.

2214:38:47 With respect to the government's position of the,  
2314:38:53 let's call it the enhancement above and beyond the  
2414:38:58 Guidelines, I would submit to this Court that these types of  
2514:39:00 matters in cases similar to Mr. Burnell's, there is always, I

114:39:08 guess, a position of trust that is kind of formed between the  
214:39:13 victim and the defendant.

314:39:15 At the time of the event of the occurrence,  
414:39:20 Mr. Burnell was no longer a deputy sheriff, and did not use  
514:39:24 his position as a sheriff in order to entice investment.

614:39:29 Like I said, I think these types of cases when  
714:39:33 individuals invest or loan money under questionable  
814:39:37 circumstances, there is always that trust that was formed.  
914:39:40 That kind of goes hand in hand with the crime.

1014:39:46 And I would tend to, you know, I would also submit  
1114:39:54 that the Sentencing Guidelines do take into account the  
1214:39:58 magnitude of the harm to the victims and the vulnerability of  
1314:40:04 the victims. The loss amount in this case, along with  
1414:40:10 several other sentencing enhancements, add an 18-level  
1514:40:15 enhancement, which is substantial, and if we look at the  
1614:40:20 amount of the additional months that are tacked on to the  
1714:40:24 base offense.

1814:40:25 Also, as far as vulnerability of victims, I -- I  
1914:40:30 have to point out to the Court that, you know, Victim Thornes  
2014:40:38 in this case was a licensed broker dealer at the time, that  
2114:40:41 managed funds for, I guess for his father's business.

2214:40:46 And, you know, when we talk about vulnerability, I  
2314:40:50 mean, he used those funds in order to facilitate his  
2414:40:54 relationship with Mr. Burnell and, you know, provide funds to  
2514:40:57 him and to Mr. Larick. And Mr. Larick, my understanding,

114:41:01 received about 1.2 million from those funds.

214:41:03 So as far as at least those victims, I don't think  
314:41:12 the Court needs to enhance the sentence based on  
414:41:16 vulnerability.

514:41:17 Now, as far as Mr. Burnell's concerned, the Court is  
614:41:22 well aware that he was a law enforcement officer for  
714:41:25 17 years. Mr. Burnell does not have any prior criminal  
814:41:29 conduct. And this is, you know, his first contact with law  
914:41:36 enforcement; albeit this is a fairly serious crime, with  
1014:41:39 substantial loss and substantial number of victims.

1114:41:42 And I think that the probation officer touched on  
1214:41:50 some of maybe what the underlying issues are that might have  
1314:41:54 caused Mr. Burnell to act the way he did.

1414:41:58 And, Your Honor, at the end of the day, collateral  
1514:42:03 to this case, Mr. Burnell lost his marriage, lost his  
1614:42:06 relationship with his daughter, and obviously lost his  
1714:42:10 standing in the community as an upstanding member. I know  
1814:42:16 there has been a lot written up in the local newspapers about  
1914:42:18 this case, so there are a lot of consequences that  
2014:42:23 Mr. Burnell has endured in addition to what this Court's  
2114:42:30 sentence is going to be fashioned as.

2214:42:32 And again, I would ask this Court to fashion a  
2314:42:35 sentence that, you know, by statute should not be greater  
2414:42:39 than necessary in order to accomplish the goals of  
2514:42:43 sentencing.

114:42:46 THE COURT: Before I cut you off, you mentioned  
214:42:49 Mr. Burnell's mother.

314:42:51 MR. BERK: Not mother. I did not mention his mother.  
414:42:55 His daughter. I apologize.

514:42:56 THE COURT: No, but I meant earlier, and it was  
614:42:58 mentioned, is there anything in his upbringing that you would  
714:43:02 like to bring to my attention?

814:43:05 MR. BERK: Well, I mean, Your Honor, you know, his  
914:43:10 father was not part of his life, not his mother. His father  
1014:43:13 was not part of his life. They had a very limited  
1114:43:17 relationship. But other than that, you know, seems like he  
1214:43:20 had a pretty normal upbringing.

1314:43:22 And again, you know, he was a law enforcement  
1414:43:25 officer for quite some time. Probably would have retired as  
1514:43:29 a law enforcement officer had he not been injured and had to  
1614:43:37 retire from that occupation.

1714:43:40 And again, Your Honor, this -- the onset of this  
1814:43:48 case is something that would seem to be outside of the  
1914:43:52 character of somebody who was a law enforcement officer,  
2014:43:54 never got in trouble, had no prior negative contacts with the  
2114:44:00 police or any other agencies.

2214:44:05 And, Your Honor, I don't -- I would submit to the  
2314:44:08 Court that a sentence as the government is seeking is beyond  
2414:44:16 greater than necessary in order to accomplish the goals of  
2514:44:20 sentencing.

114:44:21 Mr. Burnell is, I believe, 51 years old. And as the  
214:44:24 Court is aware, white collar offenders who have a very  
314:44:29 limited prior criminal activity tend to not reoffend  
414:44:34 subsequent a prison sentence regardless of the amount of time  
514:44:41 that the Court would impose.

614:44:43 And I would submit to this Court that a sentence  
714:44:53 where Mr. Burnell is incarcerated, but for a shorter period  
814:44:59 of time, would be sufficient. There have been no new  
914:45:02 allegations of any criminal activity. This case has been  
1014:45:05 ongoing for many, many years, many years. Mr. Burnell has  
1114:45:11 been compliant with Pretrial, has not gotten into any  
1214:45:14 trouble. You know, has let his health lapse, but other than  
1314:45:19 that, he has been doing well under supervision, Your Honor.

1414:45:24 THE COURT: All right. Thank you, Mr. Berk. And  
1514:45:27 I'll give -- and of course, we'll hear from Mr. Burnell, but  
1614:45:30 I'll give you a chance to respond after hearing from the  
1714:45:33 government.

1814:45:33 Let me hear from the government.

1914:45:35 MR. TRISOTTO: Thank you, Your Honor.

2014:45:36 I want to start by just addressing a few points that  
2114:45:38 Mr. Berk raised.

2214:45:40 So starting with the abuse of trust argument, the  
2314:45:44 Guidelines provide for a plus-two enhancement for abuse of  
2414:45:47 trust. But the reason the government didn't seek that  
2514:45:50 plus-two and sought it under a variance instead was because



114:45:53 he was using his former position as a deputy sheriff.

214:45:58           You know, in my opinion, and after reading the case  
314:46:01 law, it seemed like to take advantage of that plus-two  
414:46:03 enhancement, that would be more of a current -- you have to  
514:46:07 currently be in the position.

614:46:08           So, Your Honor, I think it's correct that to  
714:46:11 incorporate some of that under the variance analysis, as the  
814:46:14 government did.

914:46:14           Second, I disagree strongly that the impact to the  
1014:46:20 victims is completely taken into account under the  
1114:46:23 Guidelines. And I would point the Court to the case I cite,  
1214:46:26 *United States vs. Rangel*, where the Court looked at the  
1314:46:29 serious and lasting impact to the victims of the harm, and  
1414:46:35 varied upward from a sentence of, I believe, 235 months to  
1514:46:39 264 months.

1614:46:40           To respond about Victim John Thornes, the Victim  
1714:46:47 John Thornes was a licensed securities practice, and he lost  
1814:46:49 his license. He lost his entire family business. So to  
1914:46:52 suggest that he wasn't harmed, or can't be incorporated as a  
2014:46:56 victim here is, you know, there is just really no basis for  
2114:47:01 that argument.

2214:47:01           THE COURT: Well, I didn't take it that way.

2314:47:04           What I understood the argument to be was that, in  
2414:47:06 the sense of a vulnerable victim, is that as someone who was  
2514:47:11 of a certain level of sophistication that it was -- somebody

114:47:18 with that level of sophistication on financial matters isn't  
214:47:22 in the same position as someone with Alzheimer's.

314:47:25 MR. TRISOTTO: We wouldn't dispute that. The  
414:47:26 vulnerable victims here are people like Scott Beard whose  
514:47:32 wife had cancer, and basically was deceived into giving  
614:47:36 \$300,000 for a loan for a cancer treatment.

714:47:38 And to be clear, John Thornes was also a vulnerable  
814:47:41 victim because of the cancer side of things. His wife also  
914:47:44 had cancer. And he gave, you know, for example, Your Honor,  
1014:47:48 he was deceived into paying for a \$67,000 private flight  
1114:47:53 because defendant claimed his wife was having such a -- had  
1214:47:58 such rare and unusual cancer that unless she made it over to  
1314:48:01 Boston immediately, she was at risk of dying.

1414:48:03 And Mr. Thornes is here. He flew her from Florida  
1514:48:08 to be here again today, Your Honor. The second time he's  
1614:48:10 made a trip out here. And he would get up here and, you  
1714:48:13 know, if you prefer to hear it from him.

1814:48:14 THE COURT: No. I read his statement.

1914:48:16 Sir, I didn't mean to suggest that you haven't been  
2014:48:19 a victim here. I just wanted the record to be clear as to  
2114:48:22 how I understood the defense argument was being made. I  
2214:48:26 don't mean to suggest at all that this victim, or any of the  
2314:48:30 victims, haven't suffered or been taken advantage of.

2414:48:34 MR. TRISOTTO: And I do apologize to the Court and to  
2514:48:36 the defense if I misconstrued anything. I wanted to make

114:48:39 sure I was clear.

214:48:40 A couple more points, Your Honor. On the family  
314:48:43 point, defendant, I think I want to make clear here  
414:48:46 defendant's daughter here is in support of the government's  
514:48:48 recommendation. She submitted a paper to the Court -- well,  
614:48:53 she asked the government on her behalf to submit a paper to  
714:48:55 the Court, which we filed in support of our position.

814:48:57 So, you know, in the government's perspective, even  
914:49:01 his own family supports what we are seeking here.

1014:49:03 And as to the suggestion that defendant hasn't been  
1114:49:06 violating his bond conditions, we completely dispute that.

1214:49:09 THE COURT: Well, we'll deal with that on a separate  
1314:49:13 matter later.

1414:49:15 And I did note your reference to the civil complaint  
1514:49:20 in Riverside. But we'll -- that -- I don't know enough about  
1614:49:23 it to have that figure into the sentencing, so it won't. But  
1714:49:26 I will ask about it as to another matter after sentencing is  
1814:49:30 done.

1914:49:31 MR. TRISOTTO: And, Your Honor, to that -- relevant  
2014:49:32 to that post pretrial release violations, the Reilings are  
2114:49:38 here. And much of the money that was defrauded from the  
2214:49:42 Reilings, I believe about \$300,000 occurred after he was out  
2314:49:46 on pretrial release. And they are here if you want to speak  
2414:49:49 to them.

2514:49:49 THE COURT: I understand that. I'm aware of that.

114:49:51 And I'm sure that both Ms. Reiling and Mr. Reiling are -- had  
214:49:56 cause not to be thrilled when I didn't revoke Mr. Burnell's  
314:50:01 bail and detain him earlier, but I did it on the basis of the  
414:50:06 information which was in front of me at the time.

514:50:08 And second, that in fact it had happened so much  
614:50:12 earlier, it was brought to my attention when it was. So it  
714:50:16 was obviously much after the fact.

814:50:19 But I heard Ms. Reiling, I understand what their  
914:50:27 argument is in that regard, and why they feel so keenly this  
1014:50:33 loss, not just of the money, obviously, but also because of  
1114:50:36 the effect that it had on their parents' marriage.

1214:50:39 MR. TRISOTTO: And, Your Honor, I -- and I'll just  
1314:50:42 briefly conclude with one more thing, I think I've said a lot  
1414:50:45 in my papers, and I think the victims have said a lot, so I  
1514:50:49 don't want to rehash everything that has been said already.  
1614:50:51 If you have questions about particular victims and the harm  
1714:50:54 to them, I'm more than happy to try and address them.

1814:50:56 But there is one victim I want to focus on, and that  
1914:50:59 is Khatera Said, because twice now she has said that she  
2014:51:05 wanted to speak to the Court, dialed -- last hearing on  
2114:51:09 August 15th, and this one. And what I understand from the  
2214:51:12 agent is that the reason Ms. Said wasn't available to  
2314:51:17 speak -- and you might recall someone hung up before they had  
2414:51:20 a chance to speak, and that was Ms. Said. And she explained  
2514:51:22 to the agent she was having crippling anxiety from even the

114:51:26 thoughts of being able to get up here and speak to the Court.

214:51:28 Today she told the agent beforehand that she was

314:51:30 going to, but then again same type of issue.

414:51:33 So I want to -- the reason I want to raise that is

514:51:36 because many victims have come forward, but there is many

614:51:41 others out there, Your Honor, like Ms. Said, who -- and they

714:51:44 have for the most part submitted their victim statements, Ms.

814:51:48 Said submitted it, I believe as Exhibit J to my paper, but I

914:51:52 just want the Court to be aware that the people here today

1014:51:54 are not the only ones, and there are others out there in this

1114:51:58 world.

1214:51:58 THE COURT: Thank you, Mr. Trisotto.

1314:52:00 Mr. Berk, what response would you like to make?

1414:52:03 MR. BERK: Your Honor, I think we would submit at

1514:52:06 this point, Your Honor.

1614:52:06 THE COURT: All right. Mr. Burnell, what would you

1714:52:09 like to say to me?

1814:52:11 THE DEFENDANT: You want me to go up here, Your

1914:52:14 Honor?

2014:52:14 THE COURT: Sure.

2114:52:15 THE DEFENDANT: First of all, I appreciate your time,

2214:52:21 and the staff, you guys have always been gracious to me.

2314:52:23 I want to apologize to anybody that I have caused

2414:52:25 any harm to. I do take full responsibility. That is why I

2514:52:28 did the open plea. Don't agree with the amounts, but I did

114:52:32 take responsibility for that.

214:52:33 And the last 10 years, 10 and a half years, this has  
314:52:36 caused serious problems for people here. We've all heard it.  
414:52:39 I've heard it. It's gut wrenching. I understand it. It's  
514:52:42 been gut wrenching to me, as well.

614:52:45 I don't know where this enhancement of a firearm is  
714:52:48 coming in. That has never, ever been brought up before. I  
814:52:51 have never heard that. I've never used one, other than on  
914:52:54 patrol, towards anybody. That is just a fact. That is just  
1014:52:56 true.

1114:52:57 I did not know about Mr. Reiling's Alzheimer's. I  
1214:53:02 didn't, I just didn't. And I knew Ben for a lot of years.

1314:53:06 The other issue is, Your Honor, I understand you are  
1414:53:08 going to sentence me today. I get it. I'll take full  
1514:53:11 responsibility for that, and I'll do what you tell me to do,  
1614:53:14 and go where you tell me to go. I've always done that, with  
1714:53:16 Pretrial, with this Court. I have never missed a court  
1814:53:18 hearing. I have never missed a Pretrial.

1914:53:18 THE COURT: Believe me, Mr. Burnell, both sides will  
2014:53:24 have the chance to be heard on that.

2114:53:26 I just want to make sure now that you are focused on  
2214:53:29 telling me whatever it is that you want to tell me that -- to  
2314:53:33 influence me on how long your sentence should be.

2414:53:37 And, look, the fact that you have shown up, that you  
2514:53:40 didn't flee, despite you were facing all this time, I know

114:53:43 that. I'll actually to a small degree consider that in your  
214:53:48 sentence. You can only get so much leniency for doing what  
314:53:52 the law expects you to do.

414:53:54 But in terms of -- I assure you, you will have the  
514:53:56 chance to be heard on the other matter. But on this, just  
614:54:01 what is it that you want me to keep in mind when I determine  
714:54:05 what your sentence should be?

814:54:07 THE DEFENDANT: Just that prior to this, I've had no  
914:54:10 criminal involvement of anything. And I was good in the  
1014:54:12 community.

1114:54:13 The other thing is I know Mr. Berk said something  
1214:54:16 about my parents, that has nothing to do with anything. It  
1314:54:19 was my mother; not my father.

1414:54:20 THE COURT: I understand. I read the statement in  
1514:54:22 the presentence report.

1614:54:24 THE DEFENDANT: Okay. So I just want the government  
1714:54:26 to understand, and the Court to understand, that I am here  
1814:54:28 taking full responsibility. I'm apologizing to anybody and  
1914:54:31 everybody that I have hurt, even the people that haven't come  
2014:54:35 forward or won't come forward for whatever reason. I'm  
2114:54:39 telling you right now I accept full responsibility.

2214:54:41 And all I'm asking for is, you know, based off the  
2314:54:42 last five years on pretrial bond, no additional crimes of any  
2414:54:46 kind, no violations of any kind that I'm aware of, or my  
2514:54:50 pretrial bond officer has been aware of. And that I, you

114:54:53 know, I've lost my family, my kids. My son just told me the  
214:54:57 other day from somebody that told him he's not allowed to  
314:54:59 have any communication with me whatsoever. That was the last  
414:55:02 child of mine that had anything to do with me. And I was  
514:55:05 told -- he was told that he can't.

614:55:07 I don't think that is right. I don't think the  
714:55:10 government has a right to interfere with children like that.  
814:55:13 So that is the only thing that I have that really bothers me.  
914:55:17 I have no problem going -- whatever you tell me to do, I'm  
1014:55:21 going to do.

1114:55:21 And again, I apologize for wasting this Court's  
1214:55:23 time. I apologize for wasting the government's time, and for  
1314:55:26 every one of these people here and that have come here  
1414:55:28 before.

1514:55:29 THE COURT: Thank you, Mr. Burnell.

1614:55:30 THE DEFENDANT: Thank you, sir.

1714:55:31 THE COURT: Mr. Berk, any legal cause why sentence  
1814:55:34 should not now be imposed?

1914:55:36 MR. BERK: No legal cause, Your Honor.

2014:55:37 THE COURT: The Court has considered the sentencing  
2114:55:38 factors enumerated at Title 18 United States Code Section  
2214:55:42 3553(a), including an advisory range of 108 to 135 months,  
2314:55:48 based on an offense level of 31 and a Criminal History  
2414:55:51 Category of Roman Numeral I.

2514:55:53 The Court now sentences as follows:



114:55:55           It is ordered that the defendant shall pay to the  
214:55:58 United States a special assessment of \$1,300, which is due  
314:56:01 immediately. Any unpaid balance shall be due during the  
414:56:04 period of imprisonment at the rate of not less than \$25 per  
514:56:07 quarter, and pursuant to the Bureau of Prisons' Inmate  
614:56:12 Financial Responsibility Program.

714:56:12           It is ordered that the defendant shall pay  
814:56:14 restitution in the total amount of \$7,592,491.90, pursuant to  
914:56:22 Title 18 United States Code Section 3663(a).

1014:56:27           The amount of restitution ordered shall be paid as  
1114:56:30 follows:

1214:56:31           To Victim SB \$637,610.

1314:56:36           EB \$75,000.

1414:56:37           ME \$300,000.

1514:56:39           GM \$50,000.

1614:56:42           SM \$25,000.

1714:56:44           BP \$15,000.

1814:56:46           DS \$250,000.

1914:56:50           GT \$187,500.

2014:56:57           JT \$62,500.

2114:56:59           The Harbison Trust \$2,487,327.

2214:57:05           The Belva Jean Schultz Trust \$1,728,443.90.

2314:57:13           KS \$11,000.

2414:57:15           HF \$300,500.

2514:57:18           SM \$200,000.

114:57:20 MR \$710,420.

214:57:24 LS \$192,691.

314:57:28 KL \$239,500. And;

414:57:32 CC \$120,000.

514:57:34 Restitution shall be due during the period of  
614:57:37 imprisonment at the rate of not less than \$25 per quarter,  
714:57:41 and pursuant to the Bureau of Prisons' inmate financial  
814:57:44 responsibility program.

914:57:45 If any amount of the restitution remains unpaid  
1014:57:48 after the release from custody, nominal monthly payments of  
1114:57:52 at least 10 percent of the defendant's gross monthly income,  
1214:57:56 but not less than \$100, whichever is greater, shall be made  
1314:57:59 during the period of supervised release and shall begin  
1414:58:02 90 days after the commencement of supervision.

1514:58:04 Nominal restitution payments are ordered as the  
1614:58:08 Court finds that the defendant's economic circumstances do  
1714:58:11 not allow for either immediate or future payment of the  
1814:58:13 amount ordered.

1914:58:14 If the defendant makes a partial payment, each payee  
2014:58:19 shall receive approximately proportional payment, unless  
2114:58:22 another priority order or percentage payment is specified in  
2214:58:25 the judgment, which it will not be. All of the victims will  
2314:58:30 be paid proportionally.

2414:58:32 Pursuant to Title 18 United States Code Section  
2514:58:35 3612(f)(3)(A), interest on the restitution ordered is waived

114:58:40 because the defendant does not have the ability to pay  
214:58:43 interest.

314:58:44 Payments may be subject to penalties for default and  
414:58:47 delinquency pursuant to Title 18 United States Code Section  
514:58:50 3612(g).

614:58:52 The defendant shall comply with Second Amended  
714:58:54 General Order Number 20-04.

814:58:57 Pursuant to section 5E1.2(a) of the Sentencing  
914:59:01 Guidelines, all fines are waived, as the Court finds that the  
1014:59:03 defendant is unable to pay a fine at this time, and is not  
1114:59:08 likely to become able to pay any fine; and moreover, any  
1214:59:13 financial resources should be paid to the victims and not  
1314:59:16 pursuant to a fine.

1414:59:19 Pursuant to the Sentencing Reform Act of 1984, it is  
1514:59:24 the judgment of the Court that the defendant, Christopher  
1614:59:27 Lloyd Burnell, is hereby committed on Counts 1 through 13 of  
1714:59:30 the indictment to the custody of the Bureau of Prisons for a  
1814:59:33 term of 168 months.

1914:59:36 This term consists of 108 -- 168 months on each of  
2014:59:41 Counts 1 through 11, and 36 months on Counts 12 and 13, all  
2114:59:45 to be served concurrently.

2214:59:46 Upon release from imprisonment, the defendant shall  
2314:59:49 be placed on supervised release for a term of three years.  
2414:59:53 This term consists of three years on Counts 1 through 11, and  
2514:59:56 one year on each of Counts 12 and 13. All such terms to run

115:00:00 concurrently under the following terms and conditions. The  
215:00:03 Court will now read 13 conditions:

315:00:06 1. The defendant shall comply with the rules and  
415:00:09 regulations of the United States Probation & Pretrial  
515:00:12 Services Office and Second Amended General Order 20-04,  
615:00:17 including the conditions of probation and supervised release  
715:00:20 set forth in Section 3 of Second Amended General Order 20-04.

815:00:25 2. During the period of community supervision, the  
915:00:28 defendant shall pay the special assessment and restitution in  
1015:00:32 accordance with the orders of this judgment pertaining to  
1115:00:34 such payment.

1215:00:35 3. The defendant shall cooperate in the collection  
1315:00:37 of a DNA sample from the defendant.

1415:00:39 4. The defendant shall truthfully and timely file  
1515:00:43 and pay taxes owed for the years of conviction, and shall  
1615:00:46 truthfully and timely file and pay taxes during the period of  
1715:00:50 community supervision. Further, the defendant shall show  
1815:00:53 proof to the probation officer of compliance with this order.

1915:00:55 5. The defendant shall apply all monies received  
2015:00:59 from income tax refunds, lottery winnings, inheritance,  
2115:01:04 judgments and any other financial gains to the court-ordered  
2215:01:06 financial obligation.

2315:01:07 6. The defendant shall not be employed in any  
2415:01:10 capacity wherein the defendant has custody, control or  
2515:01:13 management of the defendant's employer's funds.

115:01:20               7. The defendant shall not engage, as a whole or  
215:01:22 partial owner, employee or otherwise in any business  
315:01:27 involving loan programs, telemarketing activities, investment  
415:01:30 programs, or any other business involving the solicitation of  
515:01:33 funds or cold calls to customers without the express approval  
615:01:37 of his probation officer prior to engaging in such  
715:01:40 employment.

815:01:41               Further, the defendant shall provide the probation  
915:01:44 officer with access to any and all business records, client  
1015:01:47 lists and other records pertaining to the operation of any  
1115:01:50 business owned, in whole or in part, by the defendant as  
1215:01:53 directed by the probation officer.

1315:01:56               8. The defendant shall not be self-employed, nor be  
1415:01:59 employed in a position that does not provide regular pay  
1515:02:03 stubs with the appropriate deductions for taxes unless  
1615:02:06 approved by his probation officer.

1715:02:09               9. When not employed or excused by the probation  
1815:02:13 officer for schooling, training or other acceptable reasons,  
1915:02:15 the defendant shall perform 20 hours of community service per  
2015:02:18 week as directed by the Probation & Pretrial Services Office.

2115:02:22               10. The defendant shall provide to the probation  
2215:02:25 officer documentation indicating the sale, transfer or  
2315:02:29 disposal of ownership of all firearms registered in the  
2415:02:32 defendant's name.

2515:02:32               11. The defendant shall participate in a program

115:02:36 for gambling treatment, which may include evaluation and  
215:02:39 counseling as directed by the probation officer until  
315:02:42 discharged from the program by the service provider with the  
415:02:46 approval of the probation officer.

515:02:47 12. As directed by the probation officer, the  
615:02:50 defendant shall pay all or part of the costs of the  
715:02:53 court-ordered treatment to the aftercare contractors during  
815:02:56 the period of community supervision. The defendant shall  
915:03:00 provide payment and proof of payment as directed by the  
1015:03:03 probation officer. If the defendant has no ability to pay,  
1115:03:06 no payment shall be required.

1215:03:08 13. The defendant shall submit the defendant's  
1315:03:12 person, property, house, residence, vehicle, papers or other  
1415:03:15 areas under the defendant's control to a search conducted by  
1515:03:18 a United States Probation Officer or law enforcement officer.  
1615:03:22 Failure to submit to a search may be grounds for revocation.

1715:03:25 The defendant shall warn any other occupants that  
1815:03:27 the premises may be subject to searches pursuant to this  
1915:03:31 condition. Any search pursuant to this condition will be  
2015:03:34 conducted at a reasonable time and in a reasonable manner,  
2115:03:37 upon reasonable suspicion that the defendant has violated a  
2215:03:40 condition of his supervision, and that the areas to be  
2315:03:44 searched contain evidence of this violation.

2415:03:46 The drug testing condition mandated by statute is  
2515:03:49 suspended based on the Court's determination that the

115:03:51 defendant poses a low risk of future substance abuse.

215:03:55 Mr. Burnell, one of the advantages of your open plea  
315:03:59 is that you have the right to appeal. Your appeal is  
415:04:07 perfected here in the District Court by the filing of a  
515:04:09 Notice of Appeal. That must happen within 14 days of today's  
615:04:13 date. If you wish, you may request that the Notice of Appeal  
715:04:17 be filed now and Ms. Sanchez will file it on your behalf; or  
815:04:28 otherwise, Mr. Berk can do it for you within the 14 days.

915:04:32 MR. BERK: I can handle it, Your Honor.

1015:04:33 THE COURT: Then you may be seated, Mr. Burnell.

1115:04:37 The justification for this sentence is what we have  
1215:04:45 heard. The government was certainly correct that the  
1315:04:53 sentence of 210 months would have been appropriate. There is  
1415:04:58 ample reason to go above 135 months under the Sentencing  
1515:05:07 Guidelines.

1615:05:08 There is the abuse of trust, although not in here,  
1715:05:14 it really is a big part of the fraud. There is the length of  
1815:05:22 the fraud. There is the -- just the evil cunning.

1915:05:27 I have to say, Mr. Burnell, you are truly one of the  
2015:05:30 most evil people who I have dealt with in the law, and that  
2115:05:34 includes as a prosecutor, prosecuting some of the largest  
2215:05:38 narcotics cases in the history of California, it includes  
2315:05:41 being a defense attorney, where I was appointed by the Court  
2415:05:44 to represent someone on death row in San Quentin who had  
2515:05:49 murdered two people, and it includes all the people who have

115:05:52 appeared in front of me in this Court.

215:05:54 But you really -- look, I shouldn't say as a  
315:05:59 person -- whether or not you are one of the most evil, what  
415:06:03 you have done is truly one of the worst things I have ever  
515:06:06 seen as either a lawyer or a judge. Just the cunning behind  
615:06:11 it, and your own sense of your own deserved righteousness  
715:06:19 when the harm that was being done was so foreseeable, and  
815:06:22 simply something for which you had no empathy whatsoever,  
915:06:26 just -- it wasn't as if you just stole \$7 million from a very  
1015:06:30 wealthy person, as serious as that would be, but to just hunt  
1115:06:35 out new -- in this predatory fashion -- new victims time  
1215:06:40 after time. And then telling them whatever it was,  
1315:06:44 projecting yourself in whatever way was necessary to get  
1415:06:48 their trust and then their money, it is truly, truly just  
1515:06:53 appalling.

1615:06:53 And to the extent that what you did was even  
1715:06:57 captured by the Guidelines, it would still be to such a  
1815:07:01 degree of evil that it would well justify giving you a  
1915:07:06 harsher sentence.

2015:07:08 But there are a number of things, as the prosecutor  
2115:07:11 stated, that aren't even really captured. And for that  
2215:07:15 reason, as I said, 210 months would have been a just  
2315:07:20 sentence.

2415:07:20 However, there are certain reasons why 168 months is  
2515:07:26 a more appropriate sentence. One of those is that the way



115:07:32 the Guidelines are calculated here, there -- the substantial  
215:07:37 financial hardship, combined with the vulnerable victim, the  
315:07:41 firearm being tied in to presenting -- the defendant's  
415:07:46 presenting himself as a police officer, it just begins to be  
515:07:50 a certain sense of double counting. It just begins to be  
615:07:53 just a sense of too much.

715:07:55           The second thing is, look, if you were as smart as  
815:07:59 you thought you were, you would have just been saying how you  
915:08:02 really did have a gambling problem. You do have a gambling  
1015:08:05 problem. If I truly believed what you said to the probation  
1115:08:08 officer, that you didn't have a gambling problem, and that  
1215:08:10 you just used all that money gambling the way you used it on  
1315:08:16 the girlfriends and the private plane flights, then I  
1415:08:20 probably would have given you 20 years in jail.

1515:08:22           But as it is, it's just inconceivable that part of  
1615:08:26 this didn't arise from the fact that you had this gambling  
1715:08:29 problem. And if I week in, week out am willing to give a  
1815:08:33 break to people who because of -- have committed crimes  
1915:08:36 because of their narcotics addiction; likewise, I will show a  
2015:08:39 certain leniency here, whether you have asked for it or not.

2115:08:46           And likewise, the -- whether you asked me to  
2215:08:50 consider your upbringing or not, I did read in the probation  
2315:08:54 report those facts, and they do call for a certain leniency.  
2415:08:59 Because I can't help but think that the way you were raised,  
2515:09:01 and the self-aggrandizement, and the somewhat really pathetic

115:09:07 way that you are trying to seem like a big guy out in your  
215:09:10 community must in some sense be tied to your upbringing and  
315:09:16 the fact that you were no longer a police officer. And that  
415:09:20 is a basis for leniency.

515:09:23 I've shown leniency to many defendants, although  
615:09:26 probably more deserving than you, and whether you in a sense  
715:09:30 deserve it or not, I'll show that leniency for you.

815:09:33 So what it comes out to is, yes, 210 months would  
915:09:37 have been a fair sentence, but 168 months is even more just  
1015:09:42 when one considers all of the reasons for leniency here.  
1115:09:48 They are meager, certainly, but they exist, and they should  
1215:09:51 be reflected in what the sentence is.

1315:09:53 Does the government have a motion to remand the  
1415:09:59 defendant?

1515:10:00 MR. TRISOTTO: Yes, Your Honor. The government would  
1615:10:01 seek to immediately remand defendant.

1715:10:03 THE COURT: And the basis for that motion, as  
1815:10:07 Mr. Burnell has correctly said, he has shown up for every  
1915:10:13 appearance, and that he showed up two weeks ago, he's shown  
2015:10:20 up today, and that was after he knew, after the release of  
2115:10:24 the probation report, just how much trouble he was in.

2215:10:29 MR. TRISOTTO: And we do recognize that, Your Honor,  
2315:10:31 but the standard under 3143 requires defendant to show -- it  
2415:10:38 puts the burden on defendant to show by clear and convincing  
2515:10:40 evidence that he's no longer a flight risk, and that he's no

115:10:43 longer a danger. As well as present a, you know, frankly, an  
215:10:48 issue that is raises a question of law on appeal. And I  
315:10:51 don't think he can show any of that.

415:10:53 I think with the Court's sentence, he's a flight  
515:10:56 risk. And I think regardless of that, he -- there is no  
615:11:00 issues for -- there is no issues of merit for appeal here  
715:11:04 that defendant has shown.

815:11:05 THE COURT: All right. Mr. Berk?

915:11:08 MR. BERK: Thank you, Your Honor.

1015:11:09 Your Honor, yesterday in speaking with my client, he  
1115:11:12 was advised by his physician that he needs to -- he needs to  
1215:11:19 go into the hospital for treatment. I do have a printout of  
1315:11:24 his blood pressure as of yesterday from the hospital,  
1415:11:27 indicating it was 200 over 159, with a pulse of 125. It  
1515:11:33 indicates that they modified his medications, advised him to  
1615:11:38 stop one medication, the name is Norvasc, and start a new  
1715:11:44 medication, actually two new medications, in order to control  
1815:11:48 his heart rate. And then they set up an appointment for, I  
1915:11:54 believe it's September 6th as a follow-up, and then probably  
2015:11:59 an echocardiogram.

2115:12:01 Your Honor, Mr. Burnell could have checked himself  
2215:12:04 into the hospital and caused another delay in sentencing; but  
2315:12:07 instead, he advised me that he's not going to go to the  
2415:12:10 hospital, he's going to come here and present himself to the  
2515:12:13 Court. That was his choice.

115:12:16 Your Honor, I think that this case has taken quite  
215:12:21 some time to resolve, you know, partly because of the  
315:12:24 pandemic, but nonetheless, Mr. Burnell did make all his  
415:12:28 appearances, complied with Probation or Pretrial.

515:12:30 And I would ask the Court to allow him some time in  
615:12:35 order to control his cardiac issues, so when he does go into  
715:12:40 custody, BOP is better able to provide him with medical care,  
815:12:47 rather than going in right now with unknown, what the  
915:12:52 medication, you know, how it's going to react with him, and  
1015:12:56 with further diagnostic testing still waiting to be  
1115:13:00 conducted.

1215:13:01 THE COURT: Thank you.

1315:13:02 The defendant is remanded immediately. The  
1415:13:05 government is correct, that the law directs that there is --  
1515:13:09 I would have to find by clear and convincing evidence that  
1615:13:13 the defendant is not a flight risk or a danger to the  
1715:13:16 community. I am unable to do that. There is the -- even  
1815:13:26 setting aside the latest evidence from the government about  
1915:13:31 the Riverside civil case on which I really don't know very  
2015:13:37 much, there is a long history here of Mr. Burnell doing what  
2115:13:41 he feels that he has to do.

2215:13:43 And beyond that, it's one thing to show up when one  
2315:13:47 still has hope; it's another thing to show up when the  
2415:13:52 sentence has been imposed on that.

2515:13:55 And there is certainly, to my mind, no issues on

115:14:01 appeal. But even if there were, there would have to be the  
215:14:04 finding of no flight risk and no danger to the community,  
315:14:07 which I'm not prepared to make.

415:14:09 BOP deals every day with people who are far more ill  
515:14:14 than Mr. Burnell. Mr. Burnell's medical problems, I don't  
615:14:17 deny that they exist, knowing that in some ways his  
715:14:21 incarceration will be harsher than they would be on a younger  
815:14:25 and healthier man is another basis for a certain amount of  
915:14:28 leniency, and I kept that in mind.

1015:14:32 But I will, if you leave me that document, I will  
1115:14:36 personally make sure that it goes over to the BOP and they  
1215:14:40 are aware of the situation. But it's really occasionally  
1315:14:45 there has been some very, very rare circumstance where the  
1415:14:50 person needed to have medical care outside the Bureau of  
1515:14:54 Prisons. But it's just -- the medical care actually there is  
1615:14:59 good, but I'll make sure that BOP is aware of Mr. Burnell's  
1715:15:05 latest condition.

1815:15:06 Is there the -- is there any request for  
1915:15:15 designation?

2015:15:16 MR. BERK: Yes, Your Honor. If we could have  
2115:15:19 Southern California.

2215:15:19 THE COURT: All right. The Court recommends to the  
2315:15:22 Bureau of Prisons that Mr. Burnell be designated in a  
2415:15:25 Southern California institution.

2515:15:27 The bond will be exonerated immediately based on the

115:15:33 remand.

215:15:34 Mr. Berk, obviously, Mr. Burnell is going to want  
315:15:41 different counsel for his appeal. And in order to appoint  
415:15:46 that, I need to have the in camera statements to show that he  
515:15:55 is entitled to appointed counsel.

615:15:59 So file those in camera. Mr. Burnell, no one else  
715:16:05 is going to see them, the government is not going to see  
815:16:07 them, it's just I need to see them, so I can appoint you a  
915:16:10 lawyer.

1015:16:10 And then we'll get a lawyer, I'll make the finding  
1115:16:15 of indigency, and then there can be a lawyer appointed for  
1215:16:18 the appeal.

1315:16:19 All right. Anything else from the defense?

1415:16:22 MR. BERK: No, Your Honor.

1515:16:23 THE COURT: All right. Anything else from the  
1615:16:25 government?

1715:16:25 MR. TRISOTTO: No, Your Honor. Thank you.

1815:16:26 THE COURT: All right. Mr. Burnell, good luck to  
1915:16:29 you.

2015:16:29 Let me say again to all of you here, I'm very, very  
2115:16:33 sorry as to what happened to you, to your loved ones, to your  
2215:16:38 family. I do hope that one thing that came out of this, of  
2315:16:43 hearing each other's statements here in court -- I know that  
2415:16:47 a lot of you have been in touch with each other, and you are  
2515:16:50 aware of what happened to each other -- but I hope any

115:16:53 lingering sense of regret, or that you were sort of beguiled  
215:17:02 here will be eliminated. As you've heard, you aren't alone  
315:17:05 here. There were, you know, there were very loving people  
415:17:09 who were taken advantage of for that reason, there were very  
515:17:13 sophisticated people who were taken advantage for that  
615:17:17 reason.

715:17:17 You should no more feel bad about what happened than  
815:17:19 you would be if you were walking down a dark alley and  
915:17:22 someone far bigger and stronger than you beat you up and took  
1015:17:27 your wallet. It wouldn't be your fault, and it's not your  
1115:17:30 fault here. And I hope this process has made you realize  
1215:17:33 that.

1315:17:34 Thank you.

1415:17:35 (Thereupon, the Court was in recess.)

15 \*\*\*\*\*

16

17 I certify that the foregoing is a correct transcript from the  
18 record of proceedings in the above-titled matter.

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24 Amy C. Diaz, RPR, CRR

September 27, 2022

25 S/ Amy Diaz

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UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA - WESTERN DIVISION  
HONORABLE MICHAEL W. FITZGERALD, U.S. DISTRICT JUDGE

UNITED STATES OF AMERICA, )  
 )  
Plaintiff, )  
 )  
vs. )  
 ) 5:17-CR-278-MWF  
CHRISTOPHER LLOYD BURNELL, )  
 )  
Defendant. )  
\_\_\_\_\_)  
 )  
 )  
 )

REPORTER'S TRANSCRIPT OF HEARING  
Los Angeles, California  
Monday, May 9, 2022

\_\_\_\_\_  
AMY DIAZ, RPR, CRR, FCRR  
Federal Official Reporter  
350 West 1st Street, #4455  
Los Angeles, CA 90012

*Please order court transcripts here: [www.amydiazfedreporter.com](http://www.amydiazfedreporter.com)*



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115:00:31 THE CLERK: Calling item number 6, case number  
215:00:36 EDCR-17-278-MWF, United States of America vs. Christopher  
315:00:40 Lloyd Burnell.

415:00:42 Counsel, please rise and state your appearance for  
515:00:44 the record.

615:00:45 MR. YANG: Good afternoon, Your Honor. Jerry Yang on  
715:00:47 behalf of the United States. And present with me at counsel  
815:00:49 table is AUSA Robert Trisotto, as well as IRS CI Special  
915:00:55 Agent Christopher Seymour.

1015:00:58 THE COURT: Good afternoon.

1115:01:00 MR. BERK: Elon Berk for Mr. Burnell. He is here  
1215:01:03 present, out of custody.

1315:01:04 THE COURT: Good afternoon, Mr. Burnell. And good  
1415:01:06 afternoon, Mr. Berk.

1515:01:06 Mr. Berk, if you and Mr. Burnell would approach the  
1615:01:10 lectern, unless there is a problem with --

1715:01:14 MR. BERK: There is, Your Honor. He has a broken --

1815:01:16 THE COURT: That's fine. We'll do it from there as  
1915:01:18 long as the court reporter can hear you. You can sit down  
2015:01:21 Mr. Burnell. That is fine.

2115:01:22 THE DEFENDANT: Thank you, Your Honor.

2215:01:23 THE COURT: Mr. Burnell, I am told that you wish to  
2315:01:28 plead guilty to the indictment in this case. Whether there  
2415:01:30 has been a further agreement between your lawyer and the  
2515:01:34 prosecutors, I'm not sure.

115:01:36 But is that what you would like to do today?

215:01:39 THE DEFENDANT: Yes, Your Honor.

315:01:40 THE COURT: Let me ask the government, what, if any,  
415:01:44 agreements have there been between the defense and the  
515:01:50 government, or is this just a straight up to every count, or  
615:01:53 what have we got here?

715:01:55 MR. YANG: Yes, Your Honor. There is no formal plea  
815:01:57 agreement, or any plea agreement with the government and the  
915:02:01 defendant.

1015:02:02 The defendant, from my understanding, is desiring to  
1115:02:05 plead straight up to Counts 1 through 13. The parties,  
1215:02:09 however, do have -- have worked out a factual basis in  
1315:02:13 support of the guilty pleas.

1415:02:14 THE COURT: I was about to say, if that is -- you --  
1515:02:18 I wanted to see if that was the case, or if that perhaps was  
1615:02:25 an issue. Then we'll deal with that when we get to that  
1715:02:29 point in the proceeding.

1815:02:30 Mr. Burnell, as your lawyer may have told you, I'm  
1915:02:35 going to be asking you a bunch of questions. It will  
2015:02:39 probably take around 45 minutes or so. And I want to do that  
2115:02:43 to make sure that you understand what you are doing. And  
2215:02:47 also, frankly, for the very practical reason I want to make  
2315:02:50 it very difficult for you to change your mind. I don't want  
2415:02:53 you to suddenly panic the day before your sentencing and feel  
2515:02:57 that you've made a mistake, or talk to relatives and friends

115:03:01 who are questioning your decision today.

215:03:04 So right now, you are perfectly free to not plead  
315:03:07 guilty and to go to trial tomorrow. The jury will be here,  
415:03:10 we'll go forward.

515:03:11 But if you do want to plead guilty, that is fine.  
615:03:16 It could conceivably give you certain advantages at  
715:03:20 sentencing. But the point of all these questions is to make  
815:03:24 it very, very difficult, if not impossible, for you to change  
915:03:28 your mind.

1015:03:29 I'm going to be asking you about your state of mind  
1115:03:32 right now to make this important decision, your understanding  
1215:03:35 of your constitutional rights, your willingness to give those  
1315:03:38 up. I'll ask you -- I want to make sure you understand the  
1415:03:44 nature of the crime charged in these 13 counts, and as well,  
1515:03:51 your admission of the facts that show that you truly are  
1615:03:54 guilty. It's just not something that you are saying because  
1715:03:58 you don't want to go to trial, or because you think it might  
1815:04:02 help you at sentencing, it's -- we have to determine that you  
1915:04:05 truly are guilty of this fraudulent scheme and then the false  
2015:04:12 tax returns.

2115:04:13 And then do you understand that that is what we'll  
2215:04:18 be doing this afternoon?

2315:04:19 THE DEFENDANT: Yes, Your Honor.

2415:04:20 THE COURT: If at any time you don't understand what  
2515:04:22 I'm asking you, then let me know. I'll do my best to explain

115:04:25 myself more clearly, or you can speak to Mr. Berk privately  
215:04:30 and ask him any questions that you want.

315:04:32 Ms. Sanchez is now going to put you under oath.  
415:04:35 Once you are under oath, you need to tell me the truth. If  
515:04:38 you do not, you would be subject to a further and different  
615:04:41 prosecution, that time for perjury or false statement instead  
715:04:45 of for these fraud charges or the false tax return.

815:04:50 Do you understand that?

915:04:51 THE DEFENDANT: Yes, Your Honor.

1015:04:52 THE COURT: Ms. Sanchez, please place Mr. Burnell  
1115:04:55 under oath.

1215:04:56 THE CLERK: Yes, Your Honor.

1315:04:57 Please raise your right hand.

1415:04:58 (Defendant sworn.)

1515:04:58 EXAMINATION

1615:05:07 BY THE COURT:

1715:05:07 Q. Mr. Burnell, what is your true and correct full name?

1815:05:10 A. Christopher Lloyd Burnell.

1915:05:12 Q. And how old are you?

2015:05:13 A. I'm 51.

2115:05:14 Q. And how many years of school did you complete?

2215:05:17 A. High school, and then I have enough for a two-year  
2315:05:22 through the insurance academies.

2415:05:24 Q. Have you discussed this case with your lawyer?

2515:05:26 A. Yes, I have.

115:05:27 Q. You and I are communicating well, I don't mean to insult  
215:05:32 you, but I do have to ask this: Right now are you drunk, are  
315:05:36 you under the influence of alcohol, are you under the  
415:05:39 influence of illegal narcotics or drugs, or are you taking  
515:05:45 some medicine that affects your judgment?

615:05:47 A. No, just heart medicine and blood pressure medicine. I  
715:05:51 didn't even take the pain medicine for the foot coming here  
815:05:54 today.

915:05:54 Q. All right. Well, I hope that you won't be in too much  
1015:05:58 pain then.

1115:05:59 Have you been -- since your arrest, have you been  
1215:06:04 treated for any form of mental illness?

1315:06:06 A. No.

1415:06:07 Q. And do you suffer from any mental illness or disability  
1515:06:10 that keeps you from understanding what you are doing here  
1615:06:13 today?

1715:06:13 A. No, sir.

1815:06:13 Q. Can you think of any reason not to plead guilty today?

1915:06:17 A. No, sir.

2015:06:21 THE COURT: Counsel, have you talked to Mr. Burnell  
2115:06:23 about this hearing?

2215:06:24 MR. BERK: I have, Your Honor.

2315:06:25 THE COURT: Do you have any reason to believe that  
2415:06:26 he should not go forward today with these guilty pleas?

2515:06:29 MR. BERK: I do not.

115:06:30 THE COURT: Do you believe he's in possession of his  
215:06:32 faculties and is competent to proceed?

315:06:34 MR. BERK: Yes, he is.

415:06:35 THE COURT: Based on the statements of Mr. Burnell  
515:06:38 and his lawyer and my own observations, I find Mr. Burnell is  
615:06:41 in possession of his faculties and is competent to proceed.

715:06:44 BY THE COURT:

815:06:44 Q. Mr. Burnell, you have the right to have the indictment  
915:06:47 read out loud at this time. Will you give up that right and  
1015:06:50 proceed with this hearing without having the indictment read?

1115:06:52 A. Yes, Your Honor.

1215:06:54 Q. Thank you.

1315:06:55 My next set of questions will be about your  
1415:06:58 constitutional rights. I'm going to list those rights for  
1515:07:01 you, and then I'll ask you if you understand them, and then  
1615:07:03 I'll ask you if you are willing to waive or give them up.

1715:07:07 If at any time you don't understand one of those  
1815:07:11 rights, then please interrupt me and let me know. I'll try  
1915:07:15 to explain that right more clearly, or you can speak to  
2015:07:19 Mr. Berk about that right.

2115:07:20 You have the right to plead not guilty and to  
2215:07:24 persist in that plea. You have the right to a speedy and  
2315:07:27 public trial by jury. It would take place in this courtroom.  
2415:07:32 It would take place tomorrow, so that is as speedy as it's  
2515:07:38 going to get.

115:07:38           At that trial, you would be presumed innocent. The  
215:07:40           burden would be on the government to prove your guilt by  
315:07:43           proving each element of the crimes charged beyond a  
415:07:47           reasonable doubt.

515:07:48           If both you and the government gave up your right to  
615:07:51           a jury trial, you would be tried by me without a jury. You  
715:07:55           have the right to be represented by a lawyer at that trial,  
815:08:00           and at every other stage of your case.

915:08:02           If you can't afford a lawyer, a lawyer will be  
1015:08:05          appointed for you free of charge. At trial, you have the  
1115:08:09          right to confront and cross-examine the government's  
1215:08:11          witnesses. That means that you would see and hear those  
1315:08:14          witnesses, and your lawyer could ask them questions on your  
1415:08:19          behalf.

1515:08:19          You have the right to testify in your own behalf at  
1615:08:22          trial and to present evidence in opposition to the  
1715:08:26          government's case. Using my authority, Mr. Berk could force  
1815:08:30          witnesses to come to court to testify for you or bring  
1915:08:33          evidence that might be helpful to you even if those witnesses  
2015:08:37          didn't want to do that.

2115:08:38          You have the right not to testify at trial, however,  
2215:08:43          as well. If you went to trial tomorrow, and you also chose  
2315:08:48          not to testify, then the jury couldn't use that fact in  
2415:08:52          deciding whether you were guilty or not guilty.

2515:08:56          You have the right to have your release conditions



115:08:59 determined by a law called the Bail Reform Act of 1984.

215:09:03 And finally, if you went to trial and you were  
315:09:07 convicted, you could appeal that conviction and the sentence  
415:09:10 I would give you to a higher court.

515:09:12 Other than your right to appeal the sentence, you  
615:09:16 are going to be giving up these rights if you plead guilty.

715:09:20 Have you talked to your lawyer about these rights?

815:09:22 A. Yes, I have.

915:09:24 Q. Do you understand these rights?

1015:09:26 A. Yes, I do.

1115:09:26 Q. And do you have any questions for me about any of these  
1215:09:29 rights?

1315:09:29 A. No, sir.

1415:09:32 Q. Do you need more time to talk to your lawyer about these  
1515:09:35 rights?

1615:09:35 A. No, sir.

1715:09:37 Q. Do you understand that if you plead guilty, you will be  
1815:09:40 incriminating yourself? And by that I mean that you will be  
1915:09:45 telling me and everybody else, everybody out in Riverside and  
2015:09:49 San Bernardino, that you truly are guilty of these crimes.  
2115:09:53 It's just not something you are saying to get the potential  
2215:09:57 benefits of pleading guilty.

2315:09:59 Do you understand that?

2415:09:59 A. Yes, I do, Your Honor.

2515:10:00 Q. And do you understand that if you plead guilty, you will

115:10:04 have waived or given up each of the rights that I have just  
215:10:07 described?

315:10:08 A. Yes, sir.

415:10:09 Q. And that includes the right to the trial tomorrow. If  
515:10:15 you plead guilty, there won't be a trial. There will be  
615:10:17 nothing else in this case except your sentencing.

715:10:21 Do you understand that?

815:10:21 A. I do.

915:10:23 Q. Do you give up the rights that I've listed?

1015:10:26 A. I do.

1115:10:28 Q. Are you entering your guilty pleas freely and  
1215:10:35 voluntarily?

1315:10:35 A. Yes, Your Honor.

1415:10:37 Q. Has anyone threatened you or brought fear to bear upon  
1515:10:40 you or your family or anyone close to you in order to get you  
1615:10:44 to plead guilty?

1715:10:44 A. No, Your Honor.

1815:10:47 THE COURT: Counsel, are you satisfied that each of  
1915:10:49 these waivers is knowingly, voluntarily and intelligently  
2015:10:52 made?

2115:10:53 MR. BERK: Yes, Your Honor.

2215:10:53 THE COURT: And do you join and concur in each of  
2315:10:56 these waivers?

2415:10:57 MR. BERK: I do.

2515:10:58 BY THE COURT:

115:10:58 Q. Mr. Burnell, my next set of questions will be about the  
215:11:03 13 crimes charged in the indictment. These -- the two crimes  
315:11:12 are as follows:

415:11:14 In counts 1 through 11, wire fraud. In violation of  
515:11:18 Title 18 United States Code Section 1343?

615:11:23 In Counts 12 and 13, making and subscribing to a  
715:11:28 false income tax return. In violation of Title 26, United  
815:11:32 States Code Section 7206(1).

915:11:37 THE COURT: I will now ask the government to state  
1015:11:40 the elements of these two crimes.

1115:11:44 MR. YANG: Your Honor, with the Court's permission,  
1215:11:46 may we have Robert Trisotto do the rest of the colloquy?

1315:11:50 THE COURT: Sure. I said the government. It's  
1415:11:52 whichever. Mr. Trisotto, it's perfectly fine for you to do  
1515:11:55 it.

1615:11:56 MR. TRISOTTO: For defendant to be guilty of the  
1715:12:00 crimes charged in Counts 1 through 11, that is 18 United  
1815:12:05 States Code Section 1343 wire fraud, the following must be  
1915:12:09 true:

2015:12:10 First, defendant knowingly participated in or  
2115:12:13 devised a scheme or plan to defraud, or a scheme or plan for  
2215:12:17 obtaining money or property by means of false or fraudulent  
2315:12:20 pretenses, representations or promises.

2415:12:24 Second, the statements made or facts omitted as part  
2515:12:29 of the scheme were material. That is, they had a natural

115:12:31 tendency to influence or were capable of influencing a person  
215:12:34 to part with money or property.

315:12:36 Third, the defendant acted with the intent to  
415:12:38 defraud. That is, the intent to deceive or cheat. And;.

515:12:41 Fourth, the defendant used or caused to be used in  
615:12:44 interstate wire communication to carry out or attempt to  
715:12:47 carry out an essential part of the scheme.

815:12:50 For defendant to be guilty of the crimes charged in  
915:12:53 Counts 12 and 13 of the indictment, that is, Title 26, United  
1015:12:58 States Code Section 7206(1), making and subscribing to a  
1115:13:03 false income tax return, the following must be true:

1215:13:06 First, defendant made and signed a tax return for  
1315:13:09 the year 2011 that he knew contained false information as to  
1415:13:13 a material matter.

1515:13:14 Second, the return contained a written declaration  
1615:13:17 that it was being signed subject to the penalties of perjury.

1715:13:21 Third, the return was filed with the IRS. And;.

1815:13:25 Fourth, in subscribing to and filing the false tax  
1915:13:27 return, the defendant acted willfully.

2015:13:30 THE COURT: Thank you.

2115:13:30 BY THE COURT:

2215:13:31 Q. Mr. Burnell, do you understand the nature of the crimes  
2315:13:34 charged?

2415:13:35 A. Yes, Your Honor.

2515:13:36 Q. And have you discussed those crimes and the elements of

115:13:39 the crimes with your lawyer?

215:13:40 A. Yes, Your Honor.

315:13:41 Q. Do you have any questions for me about these crimes?

415:13:43 A. Actually, just one. Just one question.

515:13:48 Q. Sure.

615:13:50 THE DEFENDANT: Just so I understand this  
715:13:51 completely, on the tax ones that they are talking about, is  
815:13:55 the government saying that I did my own taxes, or am I  
915:13:58 presented as me doing my own taxes.

1015:14:01 THE COURT: We will get to the factual basis in a  
1115:14:04 moment. I'm not sure exactly what the government's theory is  
1215:14:08 here.

1315:14:09 My understanding from the indictment is that when  
1415:14:11 you signed the tax return under penalty of perjury, you knew  
1515:14:16 that the amount of -- the income that was listed there on the  
1615:14:21 amount of taxes that you owed was incorrect.

1715:14:24 But let me -- we'll -- basically, the elements as  
1815:14:31 set forth were that when you signed the tax return under  
1915:14:36 penalty of perjury. You knew there was information in there  
2015:14:38 that was incorrect. And that information affected the -- it  
2115:14:42 wasn't -- it was material, it wasn't trivial. You know, it  
2215:14:46 affected the amount of taxes that you owed.

2315:14:48 THE DEFENDANT: Then I understand, yes.

2415:14:50 THE COURT: Thank you.

2515:14:52 Now let's talk about the factual basis. Is there --

115:14:59 does the government want to read it or is it a certain  
215:15:02 portion of the indictment?

315:15:04 MR. TRISOTTO: Your Honor, I think it might make the  
415:15:06 most sense for me to read the factual basis that the parties  
515:15:09 have discussed.

615:15:09 THE COURT: Sure.

715:15:10 MR. TRISOTTO: If this case would have gone to trial,  
815:15:13 the government would have proved beyond a reasonable doubt  
915:15:15 that beginning in or around the end of 2010, and continuing  
1015:15:18 through to the end of 2017, defendant knowingly used a scheme  
1115:15:23 to defraud money from certain people identified in the  
1215:15:25 indictment by using false statements and pretenses.

1315:15:29 The scheme to defraud operated as follows:

1415:15:32 Defendant earned the trust of victims by holding  
1515:15:37 himself out to be a former deputy sheriff of the San  
1615:15:41 Bernardino County Sheriff's Department. Defendant earned the  
1715:15:43 trust of victims by holding himself out to be a wealthy  
1815:15:47 businessman. Defendant made false promises and statements,  
1915:15:51 as well as material omissions to induce victims to lend money  
2015:15:54 to defendant for the purpose of investing in high return to  
2115:15:57 low risk or no risk money lending opportunities.

2215:16:01 In some instances, defendant represented that he  
2315:16:03 made short-term, high interest loans to small businesses that  
2415:16:07 used them to finance projects.

2515:16:10 In reliance on defendant's false promises and

115:16:13 statements and material omissions, victims gave money either  
215:16:17 directly to defendant or indirectly to defendant through  
315:16:20 third-parties.

415:16:23 Defendant failed to repay the loans to the victims  
515:16:26 as he had promised. Defendant lulled some of the victims  
615:16:30 into believing that repayment was forthcoming by causing them  
715:16:33 to be presented with an altered Wells Fargo bank statement  
815:16:37 that falsely stated that defendant and his wife had  
915:16:41 \$150,220,310.19 in their bank accounts; when in truth and in  
1015:16:49 fact, the real balance in those Wells Fargo bank accounts was  
1115:16:52 \$6,424.76.

1215:16:55 And in some instances, once victims invested and  
1315:16:59 lent money to defendant, defendant pressured them into giving  
1415:17:03 and lending more money by telling them if he did not receive  
1515:17:06 more funds, he would not be able to pay back the original  
1615:17:10 funds the victims had given and lent to defendant.

1715:17:13 In connection with the scheme to defraud, defendant  
1815:17:20 made false statements. These false statements included that  
1915:17:28 defendant had obtained part of his wealth by winning  
2015:17:32 multi-million dollar lawsuits. That defendant obtained part  
2115:17:35 of his wealth by obtaining and selling a patent for an air  
2215:17:39 cooled bullet resistant vest to Oakley for a substantial  
2315:17:44 amount of money. And that defendant owned a jet airplane and  
2415:17:47 employed a crew to pilot the jet airplane.

2515:17:50 These representations were material. That is, they

115:17:53 had a natural tendency to influence or were capable of  
215:17:57 influencing the victims to part with money or property.

315:18:04 Defendant acted with the intent to defraud. That  
415:18:07 is, the intent to deceive or cheat.

515:18:11 Defendant used wire communications in interstate  
615:18:15 commerce to carry out essential parts of the scheme,  
715:18:17 including the following:

815:18:18 For Count 1, cashier's check number 010570 dated  
915:18:24 December 20, 2012 in the amount of \$7,000 from the account of  
1015:18:28 John Thornes and made payable to San Manuel Casino, which was  
1115:18:32 deposited into Citizen's Business Bank in San Bernardino,  
1215:18:35 California. And processing cleared via wire to the Federal  
1315:18:38 Reserve Bank in Dallas, Texas.

1415:18:41 As to Count 2, on or about December 27, 2012, a wire  
1515:18:45 transfer of \$40,000 made from the account of Belva Jean  
1615:18:49 Shultz Revokable Trust, ending in 0704, at RBC Correspondent  
1715:18:54 Bank in St. Paul, Minnesota, to the account of Belva Jean  
1815:18:58 Shultz Revokable Trust, ending in 0503, at Union Bank in  
1915:19:02 Redlands, California.

2015:19:03 As to Count 3, cashier's check number 010578, dated  
2115:19:09 January 2, 2013, in the amount of \$60,000 from the account of  
2215:19:13 John Thornes, and made payable to San Manuel Casino, which  
2315:19:18 was deposited into Citizen's Business Bank in San Bernardino,  
2415:19:21 California, and processing cleared via wire to the Federal  
2515:19:24 Reserve Bank in Dallas, Texas.



115:19:27 As to Count 4, on or about January 3, 2013, a wire  
215:19:30 transfer of \$40,000 was made from the account of Belva Jean  
315:19:35 Shultz Revokable Trust, ending in 0704 at RBC Correspondent  
415:19:40 Bank in St. Paul, Minnesota, to the account of Belva Jean  
515:19:43 Shultz Revokable Trust, ending in 0503 at Union Bank in  
615:19:46 Redlands, California.

715:19:47 As to Count 5, cashier's check number 010589, dated  
815:19:53 January 8, 2013, in the amount of \$35,000, from the account  
915:19:56 of John Thorns, and made payable to San Manuel Casino, which  
1015:20:01 was deposited into Citizen's Business Bank in San Bernardino,  
1115:20:04 California, and processing cleared via wire to the Federal  
1215:20:07 Reserve Bank in Dallas, Texas.

1315:20:09 As to Count 6, cashier's check number 010603, dated  
1415:20:15 January 15th, 2013, in the amount of \$70,000, from the  
1515:20:20 account of John Thornes, and made payable to San Manuel  
1615:20:24 Casino, which was deposited into Citizen's Business Bank in  
1715:20:27 San Bernardino, California, and processed and cleared via  
1815:20:30 wire to the Federal Reserve Bank in Dallas, Texas.

1915:20:34 As to Count 7, cashier's check number 010604, dated  
2015:20:41 January 15, 2013, in the amount of \$25,000 from the account  
2115:20:44 of John Thornes, and made payable to San Manuel Casino, which  
2215:20:49 was deposited into Citizen's Business Bank in San Bernardino,  
2315:20:52 California, and processed and cleared via wire to the Federal  
2415:20:57 Reserve Bank in Dallas, Texas.

2515:20:59 As to Count 8, cashier's check number 010612, dated

115:21:05 January 23, 2013, in the amount of \$85,000 from the account  
215:21:10 of John Thornes, and made payable to San Manuel Casino, which  
315:21:14 was deposited into Citizen's Business Bank in San Bernardino,  
415:21:17 California, and processing cleared via wire to the Federal  
515:21:20 Reserve Bank in Dallas, Texas.

615:21:23 As to count 9, cashier's check number 010616, dated  
715:21:28 January 29, 2013, in the amount of \$45,000, from the account  
815:21:33 of John Thornes, and made payable to San Manuel Casino,  
915:21:37 deposited into Citizen's Business Bank in San Bernardino,  
1015:21:39 California, and processing cleared via wire to the Federal  
1115:21:43 Reserve Bank in Dallas, Texas.

1215:21:45 As to count 10, cashier's check number 010619, dated  
1315:21:52 January 31st, 2013, in the amount of \$40,000 from the account  
1415:21:56 of John Thornes, and made payable to San Manuel Casino, which  
1515:22:00 was deposited in the Citizen's Business Bank in San  
1615:22:02 Bernardino, California, and processing cleared via wire to  
1715:22:05 the Federal Reserve Bank in Dallas, Texas.

1815:22:08 And as to Count 11, cashier's check number 010623,  
1915:22:13 dated February 4th, 2013, in the amount of \$47,000, from the  
2015:22:18 account of John Thornes, and made payable to San Manuel  
2115:22:22 Casino, which was deposited into Citizen's Business Bank in  
2215:22:24 San Bernardino, California, and processing cleared via wire  
2315:22:28 to the Federal Reserve Bank in Dallas, Texas.

2415:22:31 In addition to the foregoing, defendant willfully  
2515:22:34 admitted income of his total income on line 22 on his United

115:22:40 States individual income tax return Form 1040 for tax year  
215:22:44 2011.

315:22:45 Specifically, defendant's 2011 tax return identified  
415:22:49 \$6,763,865 in total income on line 22 of the Form 1040 and  
515:23:02 \$6,768,834 in deductions, for a net income of negative  
615:23:10 \$4,969, with a total tax of zero dollars.

715:23:12 In truth, as defendant knew at the time he submitted  
815:23:15 the tax return, defendant received funds from investors in  
915:23:19 2011 which were not accounted for in defendant's filed tax  
1015:23:22 returns. Accordingly, defendant failed to report income on  
1115:23:27 line 22 of his Form 1040 for tax year 2011.

1215:23:31 Additionally, in tax year 2012, defendant willfully  
1315:23:36 omitted income of his total income on line 22 of his United  
1415:23:40 States individual income tax return Form 1040. Specifically,  
1515:23:46 defendant's 2012 tax return identified \$2,750,000 in total  
1615:23:52 income on line 22 of the Form 1040, and \$2,754,457 in  
1715:24:01 deductions, for a net income of negative \$4,457, with a total  
1815:24:07 tax of zero dollars.

1915:24:09 In truth, defendant knew at the time he submitted  
2015:24:11 the tax return, defendant received funds from investors in  
2115:24:15 2012 which were not accounted for in defendant's filed tax  
2215:24:19 returns. Accordingly, defendant failed to report income on  
2315:24:22 line 22 of his Form 1040 for tax year 2012.

2415:24:26 Defendant filed these 2011 and 2012 tax year income  
2515:24:32 tax returns under penalty of perjury. The returns contained

115:24:36 a written declaration that they were being signed subject to  
215:24:38 the penalties of perjury. At the time he filed these tax  
315:24:42 returns, he knew they contained false information regarding  
415:24:45 the total income. Defendant knew that federal tax law  
515:24:49 imposed a duty on him to accurately report his total income.  
615:24:52 And defendant intentionally and voluntarily violated that  
715:24:55 duty.

815:24:55 Had defendant accurately reported his total income,  
915:24:59 he would have owed additional income taxes in 2011, and  
1015:25:03 additional income taxes in 2012.

1115:25:06 THE COURT: Thank you, Mr. Trisotto.

1215:25:09 BY THE COURT:

1315:25:09 Q. Let's deal with the wire fraud charges first.

1415:25:14 Mr. Burnell, what we've just heard, in a sense, is  
1515:25:18 part of what is in the indictment. By pleading guilty, to  
1615:25:25 the extent that there is allegations here of things that you  
1715:25:28 did that were not included in that factual basis, then at  
1815:25:33 sentencing you could potentially, I don't know if you will  
1915:25:37 want to or not, you could dispute them.

2015:25:40 And for instance, the counts deal with just one  
2115:25:45 victim in particular, and perhaps as to other victims there  
2215:25:50 might be -- or I guess a couple of victims. But in any  
2315:25:54 event, the victims that were listed in these counts as  
2415:25:57 opposed to others.

2515:25:58 But as to what was read, either the things that you

115:26:03 did, or the checks that were sent, or the amounts and all of  
215:26:09 that, if we go forward, I'm going to take it both today to  
315:26:14 allow you to plead guilty, and also at the time of  
415:26:17 sentencing, that those things are true.

515:26:19 So let me just ask you right now, is what the  
615:26:22 prosecutor just read the truth? Are those the things that  
715:26:27 you did, and are those the amounts that you received in the  
815:26:33 manner that were described for Counts 1 through 11?

915:26:37 A. Yes.

1015:26:38 Q. And you've had the chance to discuss your decision to  
1115:26:48 answer that, obviously a very difficult decision, with your  
1215:26:53 lawyer?

1315:26:54 A. Yes.

1415:26:54 Q. All right.

1515:26:55 THE COURT: And Mr. Berk, this factual basis was  
1615:27:00 obviously the subject of negotiation with the government. As  
1715:27:05 I said, there are allegations in the indictment that were not  
1815:27:08 included.

1915:27:09 Then do you believe that there is a basis for the  
2015:27:13 factual basis as read?

2115:27:15 MR. BERK: I do, Your Honor.

2215:27:16 THE COURT: All right.

2315:27:17 BY THE COURT:

2415:27:17 Q. Mr. Burnell, if this case went to trial, no one could  
2515:27:21 force you to admit what you just admitted to me. Rather, the

115:27:25 burden would be on the government to prove all those things  
215:27:28 beyond a reasonable doubt.

315:27:30 Do you understand that?

415:27:30 A. Yes, Your Honor.

515:27:33 THE COURT: The next set of questions will deal with  
615:27:38 the penalties that you could face at sentencing. Nobody  
715:27:44 knows what your sentence is going to be, including me. You  
815:27:49 know, by pleading guilty, there is certain advantages to you.  
915:27:56 You can dispute certain things. We'll discuss this later.  
1015:28:00 The Sentencing Guidelines might be -- might provide a more  
1115:28:04 lenient recommended sentence for various reasons, but nobody  
1215:28:07 can be certain that those things will occur.

1315:28:10 Therefore, the fair thing is to discuss this in  
1415:28:14 terms of the harshest possible sentence the law provides for  
1515:28:21 these 13 counts; and therefore, regardless of what happened  
1615:28:28 at sentencing, I mean, you might be surprised or you would  
1715:28:31 be -- or you might be disappointed, but it won't come as just  
1815:28:35 completely out of the blue, because you will understand what  
1915:28:37 the harshest sentence could possibly be. Again, it doesn't  
2015:28:41 mean you are going to get that sentence.

2115:28:43 So what I'm now going to do is ask the government to  
2215:28:47 state the maximum penalties that you would face at  
2315:28:52 sentencing.

2415:28:54 MR. TRISOTTO: The statutory maximum sentence that  
2515:28:57 the Court can impose for each violation of Title 18 United

115:29:02 States Code Section 1343 wire fraud is: 20 years  
215:29:06 imprisonment, a three-year period of supervised release, a  
315:29:10 fine of \$250,000, or twice the gross gain or gross loss  
415:29:14 resulting from the offense, whichever is greatest, and the  
515:29:17 mandatory special assessment of \$100.

615:29:20 The statutory maximum sentence that the Court can  
715:29:22 impose for each violation of Title 26 United States Code  
815:29:25 Section 7206(1), making and subscribing a false income tax  
915:29:32 return is: Three years imprisonment, a three-year period of  
1015:29:36 supervised release, a fine of \$100,000, or twice the gross  
1115:29:40 gain or gross loss resulting from the offense, whichever is  
1215:29:42 greatest, and a mandatory special assessment of \$100.

1315:29:45 The total maximum sentence for all offenses to which  
1415:29:49 defendant is pleading guilty is 226 years imprisonment, a  
1515:29:54 three-year period of supervised release, a fine of  
1615:29:58 \$2,950,000, or twice the gross gain or gross loss resulting  
1715:30:02 from the offenses, whichever is greatest, and a mandatory  
1815:30:05 special assessment of \$1,300.

1915:30:10 THE COURT: Thank you.

2015:30:10 BY THE COURT:

2115:30:10 Q. Again, Mr. Burnell, it's not to say that you would  
2215:30:16 receive that -- a sentence like that, or anything close to  
2315:30:22 it, but do you understand that the law provides for that  
2415:30:26 possibility if you plead guilty to these 13 counts?

2515:30:29 A. Yes, Your Honor, I do.

115:30:31 Q. There was a reference to supervised release. Supervised  
215:30:35 release is similar to probation or parole in that it is time  
315:30:44 that you will spend under court supervision subject to  
415:30:48 various conditions.

515:30:50 If you violated a condition of supervised release,  
615:30:53 you could be sent back to prison for a period of time or  
715:30:56 sanctioned in some other way.

815:30:57 However, it's different from probation or parole  
915:31:00 because those are in place of prison time. Here in the  
1015:31:03 federal system, supervised release is simply added on to  
1115:31:07 whatever your prison sentence might be.

1215:31:10 Do you understand more or less that that is how  
1315:31:14 supervised release works?

1415:31:15 A. I do, Your Honor.

1515:31:16 Q. There is some situations that probably will never apply  
1615:31:22 to you. I have no reason to think they would, but just so  
1715:31:26 everything is complete, I want to make sure we've covered  
1815:31:29 everything.

1915:31:29 Let's say that you are already on probation or  
2015:31:33 parole or supervised release for some other crime in some  
2115:31:38 other court, maybe Riverside or San Bernardino Superior  
2215:31:43 Court, and by pleading guilty today, you would very likely be  
2315:31:49 in violation of that other probation or parole or supervised  
2415:31:54 release. And in that other case, some other judge could send  
2515:31:58 you back to prison because you pleaded guilty today here in



115:32:02 front of me.

215:32:03 Do you understand that?

315:32:03 A. I do, Your Honor.

415:32:04 Q. Again, this is not something that would necessarily  
515:32:11 happen, be likely to happen, but let's say I gave you an  
615:32:14 extremely harsh sentence that was near the upper end of what  
715:32:18 Mr. Trisotto just described. You do all that time, you get  
815:32:24 out, you are on supervised release, you violate your  
915:32:31 supervised release, I or some other judge has to send you  
1015:32:34 back to prison for a period of time. Under those  
1115:32:39 circumstances, it would theoretically be possible you could  
1215:32:41 even do more time than what was mentioned, but because there  
1315:32:45 would be your original sentence, and then there would be  
1415:32:48 additional prison time.

1515:32:49 Do you understand that that is a theoretical  
1615:32:52 possibility? I think given both of our ages that probably,  
1715:32:55 in fact, I don't know that that could happen, but the law  
1815:32:57 expects me to mention this as a theoretical possibility.

1915:33:00 Do you understand that?

2015:33:01 A. It wouldn't happen. And I do understand that, Your  
2115:33:03 Honor.

2215:33:03 Q. Let's say that you -- again, no reason to think that this  
2315:33:10 would happen -- but let's say that you are about to be  
2415:33:15 prosecuted for some other crime in some other court, or you  
2515:33:19 are in the process of being prosecuted. And that other case

115:33:22 in front of some other judge goes forward, and you are  
215:33:25 convicted in that case, or you plead guilty and you are  
315:33:28 sentenced to prison in that other case, if I sentence you to  
415:33:32 prison and that other judge did the same, you couldn't count  
515:33:35 on those two prison sentences as running together or  
615:33:39 concurrently.

715:33:39 What, in fact, is more likely is that they would run  
815:33:42 one after the other, or consecutively.

915:33:44 Do you understand that?

1015:33:45 A. I do, Your Honor.

1115:33:46 Q. If you are a citizen of the United States, then this plea  
1215:33:52 would likely have an affect on government benefits and civil  
1315:33:59 rights. These include your right to vote, your right to hold  
1415:34:05 office, your right to serve on a jury, and I know as former  
1515:34:09 law enforcement officer, it would affect your right to  
1615:34:13 possess a firearm or ammunition.

1715:34:15 Do you understand that?

1815:34:15 A. I do, Your Honor.

1915:34:17 Q. And if you are not a citizen of the United States --  
2015:34:22 again, I have to cover everything -- then by pleading guilty  
2115:34:26 to these felonies, it's quite likely there would be very  
2215:34:29 harsh immigration consequences. It's likely that you would  
2315:34:33 be deported or removed from the United States after serving  
2415:34:37 any prison sentence. You would be denied naturalization or  
2515:34:41 citizenship or some future amnesty. You would be denied

115:34:45 residency status, or what we commonly call a green card. You  
215:34:49 would even be denied the right to visit the United States in  
315:34:51 the future.

415:34:51 Do you understand that?

515:34:52 A. I do, Your Honor.

615:34:53 Q. Here in the federal system, there is no parole. It's  
715:34:57 been abolished. You will not be released on parole.

815:35:02 Do you understand that?

915:35:02 A. I do, Your Honor.

1015:35:03 Q. Do you have any other questions for me about the  
1115:35:07 penalties that the law provides for these crimes?

1215:35:13 A. No, sir.

1315:35:15 THE COURT: All right. Let's now mention  
1415:35:17 restitution. Although technically not a penalty, it's  
1515:35:20 something that is going to happen.

1615:35:24 Does the government have any reason to think that  
1715:35:25 there would not be mandatory restitution in this case?

1815:35:30 MR. TRISOTTO: No, Your Honor.

1915:35:31 BY THE COURT:

2015:35:31 Q. Mr. Burnell, in addition to the penalties here, a fine or  
2115:35:39 prison time or supervised release, or the payment of the \$100  
2215:35:44 per count, the law also imposes, and it's mandatory, that you  
2315:35:50 make restitution to the victims. That would certainly be the  
2415:35:55 victims who are mentioned in these 13 counts. It might  
2515:36:00 conceivably be other victims, if I determine that they exist,

115:36:05 and it could -- it will be in whatever amount is determined.

215:36:09           You and your lawyer might have a good idea of what  
315:36:12 the amounts are. I mean, we just heard a list from the  
415:36:15 indictment, but whatever the amount is that is determined by  
515:36:19 the evidence, I will impose at the time of sentencing. And  
615:36:23 even if you and your lawyer have guessed wrong, or the amount  
715:36:26 is greater than you think it is right now, that is going to  
815:36:30 be the amount of restitution.

915:36:32           Do you understand that?

1015:36:32       A. Yes, Your Honor.

1115:36:34       Q. Do you have any questions for me about the penalties that  
1215:36:39 you will face at the time of sentencing?

1315:36:41       A. No, sir.

1415:36:43       Q. My next set of questions will be about the Sentencing  
1515:36:48 Guidelines. The Sentencing Guidelines are a set of rules and  
1615:36:52 recommendations that are here in this book. And using those  
1715:36:58 recommendations and rules, I'm going to calculate a  
1815:37:03 recommended sentence for you.

1915:37:05           I do that by calculating two numbers: One is an  
2015:37:09 offense level, which reflects the seriousness of your crimes.

2115:37:14           The other is a -- is an offense -- is a Criminal  
2215:37:22 History Category, which reflects the seriousness of your  
2315:37:24 criminal record if, in fact, you had one.

2415:37:27           Using those two numbers, I'll be able to figure out  
2515:37:30 a recommended sentence for you, which is expressed as a range

115:37:34 of months.

215:37:34 Do you have an understanding that that is how the  
315:37:38 Sentencing Guidelines work?

415:37:40 A. Yes, sir.

515:37:41 Q. Now, here you and your lawyer might have a sense of how  
615:37:48 the Sentencing Guidelines are going to turn out for you. And  
715:37:51 it's typically the case that by pleading guilty, you will  
815:37:56 have shown acceptance of responsibility, and that is in your  
915:38:00 favor under the Sentencing Guidelines.

1015:38:02 However, nobody knows, including me and including  
1115:38:05 your lawyer, exactly how the Sentencing Guidelines will be  
1215:38:09 determined in your case. It might be that they will be  
1315:38:14 calculated in a way which is what you and your lawyer expect  
1415:38:18 as you are sitting here right now. Perhaps they will be  
1515:38:21 calculated in a way which is even more lenient towards you.  
1615:38:25 However, they might be calculated in a way which is harsher  
1715:38:28 than what you are hoping for. Nobody knows right now.

1815:38:31 Do you understand that?

1915:38:32 A. I do, Your Honor.

2015:38:33 Q. But even if I calculated the Sentencing Guidelines in the  
2115:38:37 most -- in a way that is extremely lenient towards you, in  
2215:38:42 other words, you are getting a recommended sentence which  
2315:38:44 isn't as harsh as you might have expected, that is not the  
2415:38:47 end of the matter. I'm simply not required to sentence you  
2515:38:51 within that recommended range of months. Again, I might

115:38:54 choose to do so, I might choose not to do so. I could  
215:38:58 sentence you in a way which is more lenient, but I could also  
315:39:01 sentence you in a way which is harsher than what the  
415:39:04 Sentencing Guidelines recommend.

515:39:06 Do you understand that?

615:39:06 A. I do now.

715:39:08 Q. Okay. I will certainly pay attention to the Sentencing  
815:39:12 Guidelines. I'll pay attention for any reasons to be more  
915:39:15 lenient.

1015:39:16 On the other hand, I'm going to pay attention to  
1115:39:17 things which either might up the Sentencing Guidelines, or  
1215:39:22 might suggest that you should get a harsher sentence. And  
1315:39:25 that includes whether any of the victims want to address me  
1415:39:27 at sentencing.

1515:39:28 Do you understand that?

1615:39:28 A. Yes, sir.

1715:39:29 Q. The other thing, however, that the Sentencing Guidelines  
1815:39:34 do for you, besides giving you a recommended sentence, is a  
1915:39:37 right to appeal your sentence, and that you will still have.

2015:39:41 By pleading guilty to all of these counts without a  
2115:39:45 formal plea agreement, you are perfectly free to appeal  
2215:39:48 whatever sentence I give you. And you are also free to make  
2315:39:51 any argument you wish at the time of sentencing.

2415:39:54 Those are things that you are not giving up.

2515:39:57 Do you understand that?

115:39:57 A. Yes, sir.

215:39:58 Q. Just a final set of questions, Mr. Burnell.

315:40:05 Are you satisfied with the representation your  
415:40:07 lawyer has provided to you?

515:40:07 A. Yes, sir.

615:40:09 Q. He's worked very hard for you. Won some things and not  
715:40:15 other things, but he has certainly been very zealous on your  
815:40:18 behalf.

915:40:18 Have you told him everything you know about your  
1015:40:20 case?

1115:40:20 A. Yes.

1215:40:21 Q. Do you believe that he's considered fully any defense you  
1315:40:23 might have to these crimes?

1415:40:25 A. Yes.

1515:40:25 Q. Do you believe that he's advised you fully concerning  
1615:40:28 this case?

1715:40:29 A. Yes.

1815:40:29 Q. Have you had enough time to talk to him about your case?

1915:40:31 A. Yes.

2015:40:32 Q. Right now you don't need to plead guilty. I'm going to  
2115:40:36 come in to work tomorrow morning whether there is a jury here  
2215:40:39 or not. I'm going to work tomorrow and get paid tomorrow  
2315:40:44 whether we have this trial or not. It's all the same to me.

2415:40:47 You can just tell me that you've changed your mind  
2515:40:50 and you don't want to plead guilty. The jury won't know that

115:40:53 we've had this discussion here today, and they won't know  
215:40:55 that you made the admissions to the factual basis.

315:40:59 Do you understand all that?

415:41:00 A. I do, Your Honor.

515:41:01 Q. However, once you do plead guilty, you are going to be  
615:41:05 stuck with that decision. I mentioned that earlier. One of  
715:41:08 the reasons for asking all these questions is to make it  
815:41:12 difficult, if not impossible, for you to change your mind.

915:41:15 Between now and sentencing, you would need to show  
1015:41:17 me a fair and just reason to withdraw your guilty plea.  
1115:41:21 Based on what you've told me here today, that would be  
1215:41:24 extremely difficult.

1315:41:25 Do you understand that?

1415:41:26 A. I do, Your Honor.

1515:41:27 Q. Once I've sentenced you, you will have no legal right  
1615:41:30 whatsoever to withdraw your guilty plea. You would need to  
1715:41:34 try to attack your conviction somehow, either through an  
1815:41:38 appeal or a separate motion. You aren't waiving your rights  
1915:41:43 to do that, but based on what you've told me here today, it  
2015:41:47 would be very, very unlikely that you would succeed in doing  
2115:41:52 that.

2215:41:53 Do you understand all that?

2315:41:54 A. I do, Your Honor.

2415:41:55 Q. Do you understand that your sentence will be determined  
2515:42:01 by me and by nobody else?



115:42:02 A. Yes.

215:42:04 Q. Has either your lawyer or anyone else promised you the  
315:42:09 particular sentence that you will receive if you plead  
415:42:12 guilty?

515:42:12 A. No.

615:42:13 Q. Are you pleading guilty because, in truth and in fact,  
715:42:17 you are guilty of these 13 charges in the indictment, the  
815:42:22 wire fraud and the tax charges?

915:42:23 A. Yes.

1015:42:25 Q. Can you think of any reason to say that these guilty  
1115:42:30 pleas are not freely, voluntarily or knowingly made?

1215:42:33 A. No.

1315:42:35 THE COURT: Mr. Berk, have you fully advised Mr.  
1415:42:38 Burnell?

1515:42:38 MR. BERK: I have, Your Honor.

1615:42:39 THE COURT: Do you concur in his pleas?

1715:42:41 MR. BERK: I do.

1815:42:41 THE COURT: Are they made with your advice and  
1915:42:42 consent?

2015:42:43 MR. BERK: Yes, Your Honor.

2115:42:44 THE COURT: Is there a factual basis for each of  
2215:42:46 these pleas, the wire fraud and the tax in your judgment?

2315:42:50 MR. BERK: Yes, Your Honor.

2415:42:51 THE COURT: Do you believe that Mr. Burnell's pleas  
2515:42:53 are being made voluntarily?

115:42:54 MR. BERK: Yes.

215:42:55 THE COURT: And do you believe that he understands  
315:42:56 the nature of the crimes charged and the consequences of  
415:43:00 pleading guilty?

515:43:01 MR. BERK: I do, Your Honor.

615:43:01 THE COURT: All right. Ms. Sanchez, please take the  
715:43:03 pleas.

815:43:05 THE CLERK: Yes, Your Honor.

915:43:07 Is Christopher Lloyd Burnell your true and correct  
1015:43:12 name?

1115:43:12 THE DEFENDANT: Yes, ma'am.

1215:43:13 THE CLERK: How do you plead to Counts 1 through 13,  
1315:43:16 guilty or not guilty?

1415:43:17 THE DEFENDANT: Guilty.

1515:43:18 THE COURT: The Court makes the following findings  
1615:43:20 and orders:

1715:43:21 The defendant has appeared with his lawyer, and his  
1815:43:24 lawyer represents that he has conferred with the defendant,  
1915:43:26 and that the defendant is pleading guilty with his lawyer's  
2015:43:29 advice and consent.

2115:43:31 The Court has addressed the defendant personally,  
2215:43:33 asking him questions under oath to determine whether his  
2315:43:36 guilty pleas are made voluntarily, with an understanding of  
2415:43:39 the crimes charged, the consequences of pleading guilty, and  
2515:43:42 to determine whether the defendant is, in fact, guilty.

115:43:45               The Court has observed the defendant, his demeanor,  
215:43:48 manner, intelligence and attitude. The Court finds the  
315:43:51 defendant is free of any coercive influences of any kind.  
415:43:55 The Court finds that the defendant's guilty pleas are  
515:43:58 intelligently made, that he is pleading guilty because he did  
615:44:01 actually commit the crimes charged and for no other reason,  
715:44:04 and that he is, in fact, guilty as charged.

815:44:06               It is therefore ordered that these guilty pleas be  
915:44:09 accepted. The pleas are determined and adjudicated to have  
1015:44:13 been made voluntarily, with an understanding of the nature of  
1115:44:16 the crimes charged, the consequences of pleading guilty, and  
1215:44:19 the factual basis for these guilty pleas.

1315:44:22               Counsel, I understand there is a suggested  
1415:44:27 sentencing date of August 15th.

1515:44:29               Is that correct?

1615:44:31               MR. BERK: Yes, Your Honor.

1715:44:32               MR. TRISOTTO: Yes, Your Honor.

1815:44:32               THE COURT: The Court sets sentencing on August 15,  
1915:44:36 2022 at 1:30 PM in this courtroom.

2015:44:38               The defendant and counsel are ordered to return at  
2115:44:42 that date and time without further order of the Court.

2215:44:45               The case is referred to the United States Probation  
2315:44:49 and Pretrial Services Office for a presentence investigation  
2415:44:53 and preparation of a presentence report.

2515:44:55               Mr. Berk, anything else on behalf of Mr. Burnell?

115:45:02 MR. BERK: One moment, Your Honor.

215:45:03 THE COURT: Sure.

315:45:06 MR. BERK: No further questions.

415:45:07 THE COURT: All right. Anything else from the  
515:45:09 government?

615:45:09 MR. TRISOTTO: No, Your Honor. Thank you.

715:45:11 THE COURT: All right. I notice that there are two  
815:45:14 onlookers, which is perfectly fine. The First Amendment says  
915:45:18 that courtrooms are open.

1015:45:20 Just out of my own curiosity, does the -- is this  
1115:45:25 government workers, victims, friends or family of  
1215:45:28 Mr. Burnell?

1315:45:30 AGENT SEYMOUR: Both from IRS Criminal  
1415:45:32 Investigations, one was my supervisor and one was the agent.

1515:45:35 THE COURT: This has obviously been a long time  
1615:45:38 coming, not through any fault of Mr. Burnell or through the  
1715:45:42 government, in large part just because of the pandemic, but  
1815:45:45 nonetheless, here we are.

1915:45:47 So thank you everyone.

2015:45:51 Mr. Burnell, I will see you in August.

2115:45:53 THE DEFENDANT: I'll be here, sir.

2215:45:55 THE COURT: Speaking of which, the defendant will  
2315:45:57 remain on bond on the same terms and conditions.

2415:46:01 I'm sure this isn't going to happen, Mr. Burnell,  
2515:46:03 especially with your background, but just don't do something

115:46:06 stupid between now and August.

215:46:07 THE DEFENDANT: I will not, sir.

315:46:08 THE COURT: I'm sure you won't.

415:46:09 All right. Thank you everyone.

5 \*\*\*\*\*

6

7 I certify that the foregoing is a correct transcript from the  
8 record of proceedings in the above-titled matter.

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14 Amy C. Diaz, RPR, CRR

December 21, 2022

15 S/ Amy Diaz

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FILED

2017 DEC 20 PM 3:20  
CLERK U.S. DISTRICT COURT  
CENTRAL DIST. OF CALIF.  
RIVERSIDE  
BY \_\_\_\_\_

UNITED STATES DISTRICT COURT  
FOR THE CENTRAL DISTRICT OF CALIFORNIA

September 2017 Grand Jury

UNITED STATES OF AMERICA,

Plaintiff,

v.

CHRISTOPHER LLOYD BURNELL,

Defendant.

EDCR 17-0278 MWF

I N D I C T M E N T

[18 U.S.C. § 1343: Wire Fraud; 26  
U.S.C. § 7206(1): Making and  
Subscribing to a False Income Tax  
Return]

The Grand Jury charges:

COUNTS ONE THROUGH ELEVEN

[18 U.S.C. § 1343]

A. THE SCHEME TO DEFRAUD

1. Beginning on a date unknown, but no later than on or about November 30, 2010, and continuing to in or about September 2017, in San Bernardino and Riverside Counties, within the Central District of California, and elsewhere, defendant CHRISTOPHER LLOYD BURNELL ("BURNELL"), together with others known and unknown to the Grand Jury, knowingly and with intent to defraud, devised, participated in, and executed a scheme to defraud victims as to material matters, and to obtain money and property from such victims by means of materially

1 false and fraudulent pretenses, representations, and promises, and  
2 the concealment of material facts.

3 2. The scheme to defraud operated, in substance, as follows:

4 a. Defendant BURNELL would earn the trust of victims by  
5 holding himself out to be a former deputy sheriff of the San  
6 Bernardino County Sheriff's Department.

7 b. Defendant BURNELL would earn the trust of victims by  
8 holding himself out to be a wealthy businessman.

9 c. Defendant BURNELL would make false promises and  
10 statements, as well as material omissions, to induce victims to lend  
11 money to defendant BURNELL, for the supposed purpose of investing in  
12 high-return, low-risk or no-risk money-lending opportunities.

13 d. In some instances, defendant BURNELL would represent  
14 that he made short-term, high-interest loans to small businesses that  
15 used them to finance projects.

16 e. In some instances, defendant BURNELL would ask victims  
17 to loan him money for cancer treatment for defendant BURNELL's wife.

18 f. In some instances, defendant BURNELL would ask victims  
19 to loan him money for costs associated with a child custody dispute  
20 with defendant BURNELL's father-in-law.

21 g. In some instances, defendant BURNELL would use third  
22 parties to make false promises and statements, and material  
23 omissions, to victims.

24 h. In reliance on defendant BURNELL's false promises and  
25 statements, and material omissions, victims would give money either  
26 directly to defendant BURNELL or indirectly to defendant BURNELL via  
27 third parties.  
28

1 i. In some instances, defendant BURNELL would pay the  
2 victims back their initial investments with large amounts of supposed  
3 profits and, having earned the trust and confidence of the victims,  
4 would subsequently ask for larger investments.

5 j. Defendant BURNELL would not apply any of the victims'  
6 money toward the purported investments, nor toward any cancer  
7 treatment for defendant BURNELL's wife, nor for any child custody  
8 dispute with defendant BURNELL's father-in-law, as he had  
9 represented. Instead, after the victims had sent him the money,  
10 defendant BURNELL spent the money on his own personal expenses.

11 k. Defendant BURNELL would fail to repay the loans to the  
12 victims as he had promised.

13 l. Defendant BURNELL would lull some of the victims into  
14 believing that repayment would be forthcoming by causing them to be  
15 presented with an altered Wells Fargo Bank statement that falsely  
16 represented that defendant BURNELL and his wife had \$150,220,310.19  
17 in their bank accounts, when, in truth and in fact, the real balance  
18 in those Wells Fargo Bank accounts was \$6,424.76.

19 m. In some instances, once victims invested and lent  
20 money to defendant BURNELL, defendant BURNELL would pressure them  
21 into giving and lending him more money, by telling them that his  
22 funds had been seized by federal law enforcement. In truth and in  
23 fact, federal law enforcement agencies had not seized defendant  
24 BURNELL's funds.

25 n. In some instances, once victims invested and lent  
26 money to defendant BURNELL, defendant BURNELL would pressure them  
27 into giving and lending him more money, by telling them that if he  
28



1 did not receive more funds, he would not be able to pay back the  
2 original funds the victims had given and lent to defendant BURNELL.

3 3. By devising, executing, and participating in the above  
4 scheme, defendant BURNELL induced and attempted to induce victims  
5 S.B., D.S., G.T., M.E., G.M., B.P., J.T., Harbison Trust, and Belva  
6 Jean Shultz Trust, to distribute to him funds totaling approximately  
7 \$5,672,380.90.

8 B. THE MISREPRESENTATIONS

9 4. In furtherance of the scheme to defraud, defendant BURNELL,  
10 and others known and unknown to the Grand Jury, knowingly made,  
11 caused to be made, and aided and abetted the making of, the following  
12 material false and fraudulent pretenses, representations, and  
13 promises, to, among others, victim investors:

14 a. That defendant BURNELL had obtained part of his  
15 purported wealth by winning a multi-million dollar lawsuit against  
16 the County of San Bernardino for workplace-related injuries he  
17 suffered as a deputy sheriff for the San Bernardino County Sheriff's  
18 Department.

19 b. That defendant BURNELL had obtained a part of his  
20 purported wealth by winning a multi-million dollar lawsuit against  
21 Kaiser Permanente for medical malpractice in connection with  
22 workplace-related injuries he suffered as a deputy sheriff for the  
23 San Bernardino County Sheriff's Department.

24 c. That defendant BURNELL had obtained part of his wealth  
25 by obtaining and selling a patent for an air-cooled, bullet-resistant  
26 vest to Oakley, Inc. for a substantial amount of money.

27 d. That defendant BURNELL owned a jet airplane and  
28 employed a crew to pilot the jet airplane.

5. In truth and in fact, as defendant BURNELL then well knew:

a. Defendant BURNELL never prevailed in a lawsuit against the County of San Bernardino for workplace-related injuries he suffered as a deputy sheriff for the San Bernardino County Sheriff's Department.

b. Defendant BURNELL never prevailed in a lawsuit against Kaiser Permanente for medical malpractice in connection with workplace-related injuries he suffered as a deputy sheriff for the San Bernardino County Sheriff's Department.

c. Defendant BURNELL never sold a patent to Oakley, Inc.

d. Defendant BURNELL did not own any jet airplane, but rather chartered a jet airplane and told the crew to pretend that defendant BURNELL owned the jet airplane.

C. CONCEALMENT OF MATERIAL FACTS

6. In furtherance of the fraudulent scheme, defendant BURNELL and his co-schemers knowingly concealed and caused others to conceal the following material facts from victims, among others:

a. Defendant BURNELL had no legitimate revenue-producing money-lending operation.

b. Defendant BURNELL had no legitimate revenue-producing business investment operation.

c. Defendant BURNELL's wife, L.B., was not undergoing cancer treatments.

d. Federal law enforcement authorities investigating defendant BURNELL had not seized funds in his bank accounts.

e. Defendant BURNELL used the funds given to him by investors for personal expenditures, including gambling, for the

purchase of retail items and the chartering of jet airplanes, and to repay other investors.

D. USE OF INTERSTATE WIRE COMMUNICATIONS

7. On or about the following dates, within the Central District of California, and elsewhere, defendant BURNELL, for the purpose of executing and attempting to execute the above-described scheme to defraud, transmitted and caused the transmission of the following items by means of wire communication in interstate and foreign commerce:

COUNT	DATE	ITEM WIRED
ONE	December 26, 2012	Cashier's check number 010570 in the amount of \$70,000 from the account of J.T. made payable to San Manuel Casino deposited into Citizen's Business Bank in San Bernardino, California, and processed and cleared via wire to the Federal Reserve Bank in Dallas, Texas.
TWO	December 27, 2012	Wire transfer of \$40,000 from the account of Belva Jeanne Shultz Revocable Trust ending in 0704 at RBC Correspondent Bank in St. Paul, Minnesota, to the account of Belva Jeanne Shultz Revocable Trust ending in 0503 at Union Bank in Redlands, California.
THREE	January 2, 2013	Cashier's check number 010578 in the amount of \$60,000 from the account of J.T. made payable to San Manuel Casino deposited into Citizen's Business Bank in San Bernardino, California, and processed and cleared via wire to the Federal Reserve Bank in Dallas, Texas.
FOUR	January 3, 2013	Wire transfer of \$40,000 from the account of Belva Jeanne Shultz Revocable Trust ending in 0704 at RBC Correspondent Bank in St. Paul, Minnesota, to the account of Belva Jeanne Shultz Revocable Trust ending in 0503 at Union Bank in Redlands, California.
FIVE	January 8, 2013	Cashier's check number 010589 in the amount of \$35,000 from the account of J.T. made payable to San Manuel Casino deposited into Citizen's Business Bank in San Bernardino, California, and processed and cleared via wire to the Federal Reserve Bank in Dallas, Texas.

COUNT	DATE	ITEM WIRED
SIX	January 15, 2013	Cashier's check number 010603 in the amount of \$70,000 from the account of J.T. made payable to San Manuel Casino deposited into Citizen's Business Bank in San Bernardino, California, and processed and cleared via wire to the Federal Reserve Bank in Dallas, Texas.
SEVEN	January 15, 2013	Cashier's check number 010604 in the amount of \$25,000 from the account of J.T. made payable to San Manuel Casino deposited into Citizen's Business Bank in San Bernardino, California, and processed and cleared via wire to the Federal Reserve Bank in Dallas, Texas.
EIGHT	January 23, 2013	Cashier's check number 010612 in the amount of \$85,000 from the account of J.T. made payable to San Manuel Casino deposited into Citizen's Business Bank in San Bernardino, California, and processed and cleared via wire to the Federal Reserve Bank in Dallas, Texas.
NINE	January 29, 2013	Cashier's check number 010616 in the amount of \$45,000 from the account of J.T. made payable to San Manuel Casino deposited into Citizen's Business Bank in San Bernardino, California, and processed and cleared via wire to the Federal Reserve Bank in Dallas, Texas.
TEN	January 31, 2013	Cashier's check number 010619 in the amount of \$40,000 from the account of J.T. made payable to San Manuel Casino deposited into Citizen's Business Bank in San Bernardino, California, and processed and cleared via wire to the Federal Reserve Bank in Dallas, Texas.
ELEVEN	February 4, 2013	Cashier's check number 010623 in the amount of \$47,000 from the account of J.T. made payable to San Manuel Casino deposited into Citizen's Business Bank in San Bernardino, California, and processed and cleared via wire to the Federal Reserve Bank in Dallas, Texas.

COUNTS TWELVE AND THIRTEEN

[26 U.S.C. § 7206(1)]

On or about the following dates, in San Bernardino County, within the Central District of California, and elsewhere, defendant CHRISTOPHER LLOYD BURNELL ("BURNELL") willfully made and subscribed to a materially false United States Individual Income Tax Return, Form 1040, for the following calendar years, which defendant BURNELL verified by a written declaration that it was made under penalty of perjury, and filed such tax return with the Internal Revenue Service, which defendant BURNELL did not believe to be true and correct as to every material matter contained therein, in that defendant BURNELL falsely claimed on line 22 of his Form 1040 that his total income in the indicated tax year was the amount indicated below, when, as defendant BURNELL then knew and believed, his total income for the

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indicated calendar year was substantially more than the amount of  
total income he claimed:

COUNT	DATE	CALENDAR YEAR	INCOME REPORTED ON LINE 22
TWELVE	October 15, 2012	2011	\$6,763,865
THIRTEEN	October 15, 2013	2012	\$2,750,000

A TRUE BILL

18/  
Foreperson

SANDRA R. BROWN  
Acting United States Attorney

*Lawrence S. Middleton for:*  
LAWRENCE S. MIDDLETON  
Assistant United States Attorney  
Chief, Criminal Division

JOSEPH B. WIDMAN  
Assistant United States Attorney  
Chief, Riverside Office

JERRY C. YANG  
Assistant United States Attorney  
Deputy Chief, Riverside Office