

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS**

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
v.)	No. 14-CR-30033-DRH
)	
GEMMA TZEN,)	
)	
Defendant.)	

DEFENDANT’S SENTENCING MEMORANDUM

I. Introduction

After working at National Solutions for approximately three (3) months, Gemma Tzen realized what she was doing was wrong.

Gemma refused to continue working at a morally corrupt company. She quit in early 2011, called law enforcement to report what she observed at National Solutions and got on with her life. The last thing Gemma expected when she left National Solutions was to be charged by a federal grand jury nearly 4 years after she reported criminal conduct to law enforcement. Gemma certainly never expected to face the real specter of going to prison.

II. Matthew Tzen

Beginning sometime in 2005, Gemma, who is from England, began dating Brett Parslow, a British ex-pat who resided in Florida. Gemma and Brett maintained their long distance relationship through the internet and frequent trips both would make to visit the other.

Ultimately, because she was entering the United States so often on a tourist visa, Gemma was refused entry. Therefore, in September of 2010, Gemma applied for and was granted status as a resident alien which allowed her to have a “green card” so that she could remain and work in the United States. Gemma intended to marry Brett, raise a family and reside in the United States for the rest of her life.

It is a common occurrence for an adult child to ask their parents for help in obtaining employment. It is equally as common for a parent to help their child find a job either with their company or with a friend's company.

In Gemma's case, her Dad Matthew Tzen secured employment for her at National Solutions. Matthew was a high ranking official at National Solutions and was able to easily find employment for his daughter there.

Gemma started work at National Solutions on September 10, 2010. She was taught how to "close" when making blind telephone calls to people. Ultimately, Gemma quit on January 11, 2011 because she realized that what she was doing at National Solutions was wrong. Gemma's conscious would not permit her to continue working at a company whose sole goal was to bilk people desperate for a financial lifeline. To a lesser extent, Gemma knew that what was going on at National Solutions was illegal.

Most adult children respect their parents. As children grow into adulthood, parents generally become more intelligent. One can imagine the difficulty Gemma had in realizing that what her father was doing was morally wrong. One can imagine the difficulty Gemma had in deciding to confront her father about what he was doing at National Solution. One can imagine the betrayal Gemma felt at how her father placed her in a situation where the job he found for her was to break the law. One can imagine the difficulty Gemma had in ultimately deciding to contact law enforcement to report what was transpiring at National Solutions.

Gemma's decision to quit National Solutions and contact law enforcement not only impacted her future but her father's as well. But, it was the "right" thing to do.

Matthew Tzen has not been charged by the Government notwithstanding the fact that he made considerable sums of money, was a high ranking official at National Solutions and recruited his own daughter and others to work at National Solutions.

More shocking is that Matthew Tzen never once has contacted the undersigned or the Government to "man up" and take responsibility for his actions to see if there is a way that Gemma could be absolved of her actions in exchange for his "guilty" plea. "Coward," "lowlife," or "creep" are three nouns which describe Matthew Tzen.

III. The Fraud

Fraudsters are viewed just above child pornographers by most people. Fraudsters prey on society's weakest members and everyone knows someone who has been a victim of these fraudsters or has been contacted by them.

Greed is the common element in ALL of these frauds. In an attempt at shock and awe, the Government will no doubt provide this Honorable Court with slick exhibits showing sentences given in other fraud cases in the Southern District of Illinois.

Gemma is unlike any other individual contained on these fancy charts. Gemma's motive was not greed. Gemma's motive was to get a job so that she could save up money to marry her fiancée.

Had Gemma's Dad worked at Enterprise Rent a Car, Gemma would have rented vehicles out to people. Had her Dad been a manager at McDonald's, Gemma would have worked there. The point is that Gemma had the worst luck on the planet in having a fraudster for a father.

The amount of loss attributable to Gemma is a tad over \$50,000 which is miniscule in comparison to the overwhelming majority of these types of frauds. It certainly pales in comparison to the loss that would be attributable to her uncharged father.

IV. Harsh Punishment Has Already Been Received By Gemma

Gemma will be deported. This deportation will mean Gemma will be separated from her fiancée. Gemma will never be allowed to return to the United States. Gemma's future is severely altered because of her conviction in this case.

What greater punishment is there than being torn away from the individual you intended to spend the rest of your life with? Gemma's future hopes of marrying Brett, raising a family and living in the United States have been shattered.

Gemma is young enough that ultimately this scar will heal. But every time she thinks about "what if?" the scar will be ripped open and she will have to deal with the emotional pain the three months at National Solution has caused her.

The undersigned wants to be perfectly clear regarding the Government's decision to charge Gemma. Gemma is not a "victim" of Government overreach. A crime was committed by Gemma and at the time the charging decision was made, there was credible evidence that Gemma was involved more than what ultimately proved to be the case. The undersigned had numerous, long conversations with Government officials and certain concessions were made by the Government.

The fact though is that by requesting an Advisory Guideline sentence, which would mean incarceration, the Government does not recognize the harsh punishment Gemma has already received.

V. 3553 Considerations

In Gemma's case, it is not necessary to do a thorough analysis of the factors which comprise 18 United States Code Section 3553.

The Supreme Court has emphasized that sentencing courts should impose a punishment that "fit[s] the offender and not merely the crime." *Pepper v. United States*, 131 S.Ct. 1229, 1240 (2011). The implication for someone like Gemma is that this Honorable Court must consider:

1. that her father hired her in September of 2010;
2. that she was employed at National Solutions for only 3 months;
3. that the amount of loss attributed to Gemma reflects the small role she played;
4. that she quit when she realized what she was doing was wrong,
5. that she contacted law enforcement when she left; and
6. that she has already been punished due to this crime.

When District Court judges began deviating from the Advisory Guidelines in these cases, the Government prepared a Sentencing Memorandum to explain "why" no variances were warranted. The undersigned assumes that the Government will prepare such a Memorandum in this case. The weakness in the Government's position is that it focuses the entire sentencing on the crime. It does not consider the above six factors.

Moreover, the Supreme Court has outright rejected any rule that would require "extraordinary" circumstances to justify a sentence outside the Guidelines range, which appears to be the Government's position. *Gall v. United States*, 128 S.Ct. 586, 595 (2007)

Even though Gemma gave a detailed proffer about her activities at National Solution, including information about her father there will be no motion filed by the Government "rewarding" her for this information. While Gemma's cooperation might not be considered "substantial" so as to file a 5K1.1 Motion, a district court may consider a Defendant's cooperation with the Government as a basis for a reduced sentence, even if the Government has not made a § 5K1.1 or Rule 35 motion. *See United States v. Leiskunas* 656 F.3d 732 (7th Cir. 2011), *United States v. Knox*, 573 F.3d 441, 453 (7th Cir.2009); *United States v. Richardson*, 558 F3d 680, 681(7th Cir.2009).

The preamble of 3553 mandates that the court "shall impose a sentence sufficient, ***but not greater than necessary***, to comply with the purposes set forth in paragraph (2) of this subsection." The undersigned wishes there were more he could do for Gemma than fight to keep her out of prison. The undersigned wishes there were a way that something could be done so that Gemma is not deported. Sadly, the only thing the undersigned can do is request a variance from the Advisory Guideline sentence of one year to either probation or a split sentence.

VI. Conclusion

A variance to either probation or a split sentence sparing Gemma from prison satisfies 18 United States Code Section 3553 and more importantly is a fair sentence.

GEMMA TZEN

BY:

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CERTIFICATE OF SERVICE

I hereby certify that on July 8, 2015, a copy of the attached *Defendant's Sentencing Memorandum* was filed electronically with the Clerk of the Court to be served by operation of the Court's electronic filing system upon the following:

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