

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

UNITED STATES OF AMERICA	:	CRIMINAL NO. 3:19CR42(RNC)
	:	
v.	:	
	:	
PATRICK NDAYA KATAMBWA,	:	
a.k.a. "Kaseba Katambwa,"	:	
"Katambwa Patrick Ndaya," and	:	
"Patrick Katambwa Ndaya"	:	October 17, 2019

GOVERNMENT’S RESPONSE TO DEFENDANT’S SENTENCING MEMORANDUM

The government respectfully submits this memorandum in response to the sentencing memorandum of Defendant Patrick Ndaya Katambwa for the sentencing scheduled on October 22, 2019, at 10:00 a.m. On July 9, 2019, the defendant pleaded guilty to Count One of the indictment charging him with making a False Statement in an Immigration Document in violation of 18 U.S.C. § 1546(a). More specifically, Katambwa admitted that on his Form I-589 asylum application filed with U.S. Citizenship and Immigration Services (“USCIS”), he knowingly made material false statements under oath by not disclosing (1) that he had resided from 1996 to January 2018 in the United Kingdom (“UK”) under the assumed identity of “Kaseba Katambwa”; and (2) that while residing there, he was arrested, prosecuted, convicted, and incarcerated under the “Kaseba Katambwa” identity for four counts of rape; one count of arranging to facilitate the control of criminal property; and one count of dishonestly retaining a wrongful credit. As discussed below, the government submits that Katambwa should be sentenced to time served because he was been in custody since his arrest on February 1, 2019, which is in excess of the top

of the Sentencing Guideline range calculated in the Presentence Report (“PSR”). Katambwa will be placed in immigration custody at the conclusion of the sentencing hearing.

I. The Offense Conduct and the Defendant’s Criminal History

Patrick Ndaya Katambwa was born in the Democratic Republic of the Congo (“DRC”) and assumed the identity of “Kaseba Katambwa” while residing in the UK from 1996 to November 2017. During that period, he accumulated the following criminal history in the UK under the “Kaseba Katambwa” identity:

- Driving a Motor Vehicle with Excess Alcohol – January 29, 2002: fine and driving disqualification;
- Driving Whilst Disqualified and While Uninsured – May 7, 2002: fine and driving disqualification;
- Driving Otherwise Than in Accordance with a License, Failing to Provide a Specimen for Analysis (Driving or Attempting to Drive), Using Vehicle While Uninsured – January 14, 2005: fine and driving disqualification;
- Using False Instrument With Intent It Be Accepted as Genuine – March 20, 2006: community punishment order for 180 hours;
- Entering Arrangement to Facilitate the Acquisition, Retention, Use, or Control of Criminal Property – June 7, 2006: 8 months of imprisonment, deportation recommended;
- Dishonestly Retaining a Wrongful Credit – June 7, 2006: 12 months of imprisonment concurrent;
- Rape of a Female Aged 16 Years or Over (4 separate counts) – December 9, 2009: 4 concurrent sentences of 13 years of imprisonment.¹

PSR ¶¶ 36-41.

¹ Although the official court charge was rape of a female aged 16 years or over, the underlying UK records indicate that the defendant’s victim was actually 14 years old when the offense was committed.

On April 23, 2018, the U.S. Citizenship and Immigration Services (“USCIS”) of the Department of Homeland Security (“DHS”) received an Application for Asylum and for Withholding of Removal, known as Form I-589, filed by the defendant. In the application, the defendant listed his name as “Patrick Ndaya Katambwa,” “Katambwa Patrick Ndaya,” and “Patrick Katambwa Ndaya.” In a section entitled “Part A.I. Information About You,” Katambwa stated, among other things, that his name was “Patrick Ndaya Katambwa”; he resided at 140 Marigold Avenue, 2nd Floor, Bridgeport, Connecticut 06606; his date of birth is “02-13-1969”; and his nationality is “Congolese.” In the section entitled “Part A.III. Information About Your Background,” Katambwa stated, among other things, that he had resided in Kinshasa, DRC, from February 1969 to January 2018. PSR ¶ 9.

In the section entitled Question 2 of “Part B. Information About Your Application,” the following question was asked: “Have you or your family members ever been accused, charged, arrested, detained, interrogated, convicted and sentenced, or imprisoned in any country other than the United States?” Katambwa marked the “Yes” box and wrote in the following explanation by hand: “My father and myself were . . . accused, charged and arrested in 2016 of plot[t]ing to overt[h]row the government with the help of ethnic group, Hutu Rwandans . . . and encouraging and mobilizing the public to protest against the government and President Kabila to remain in power.” Other than this statement, Katambwa provided no additional explanation about his prior criminal history. PSR ¶ 10.

In the section entitled “Part D. Your Signature,” the following language appears above a signature line: “I certify, under penalty of perjury under the laws of the United States of America, that this application and the evidence submitted with it are all true and correct. Title 18, United

States Code, Section 1546(a) provides in pertinent part: Whoever knowingly makes under oath, or as permitted under penalty of perjury under section 1746 of Title 28, United States Code, knowingly subscribes as true, any false statement with respect to a material fact in any application, affidavit, or other document required by the immigration laws or regulations prescribed thereunder, or knowingly presents any such application, affidavit, or other document which contains any such false statement or which fails to contain any reasonable basis in law or fact— shall be fined in accordance with this title or imprisoned up to 25 years. I authorize the release of any information from my immigration record that U.S. Citizenship and Immigration Services (USCIS) needs to determine eligibility for the benefit I am seeking.” Katambwa executed his handwritten signature below this paragraph. The name “Katambwa Patrick Ndaya” is in typed print. PSR ¶ 11.

The defendant sent the asylum paperwork via certified mail from Bridgeport, CT, to the USCIS Service Center in St. Albans, VT. The return address on the envelope bears the defendant’s name and 140 Marigold Avenue in Bridgeport. In fact, the postage stamp was issued from a post office in Bridgeport, CT 06610. PSR ¶ 12.

On or about June 18, 2018, the defendant appeared before a DHS asylum officer in Newark, New Jersey. In “Part F. To Be Completed at Asylum Interview, if Applicable,” the defendant re-executed his signature certifying that the contents of his application were “all true,” subject to the corrections that he had identified in the application with the DHS asylum officer. The defendant made no mention of his UK criminal history and no correction about where he had previously resided. He also submitted his DRC passport as part of his asylum application. PSR ¶ 13.

On or about September 14, 2018, USCIS approved the defendant's application for asylum pursuant to section 208 of the Immigration and Nationality Act based on his representations therein and to the DHS asylum officer. PSR ¶ 14.

Subsequently, DHS's Office of Biometric Identity Management received certain digital fingerprints from a counterpart law enforcement agency of the UK. The United States, UK, and Australia share data for immigration and border security purposes, including data relating to convicted felons removed for sex offenses from the United States, UK, or Australia. DHS later determined that the digital fingerprints provided by the UK for "Kaseba Katambwa" matched the fingerprints on file for U.S. visa applications submitted by "Patrick Ndaya Katambwa" in 2018. One of those U.S. visa applications was granted. PSR ¶ 15.

Most significantly, the digital fingerprints for "Kaseba Katambwa" corresponded to a 2009 UK conviction for four counts of rape of a female for which he had received, and served, four concurrent sentences of 13 years of imprisonment in the UK. PSR ¶ 16. According to records provided to the DHS by UK immigration authorities, the defendant's rape victim was a 14-year-old girl who knew the defendant as "Uncle Patrick," who was considered a trusted friend of her family.

II. The Guilty Plea and Sentencing Guideline Calculation

The defendant admitted at his guilty plea that, from in or about 1996 to in or about November 2017, he resided in the UK under the assumed identity of Kaseba Katambwa. In addition, the defendant admitted that while residing in the UK under that identity, he was arrested, prosecuted, convicted, and incarcerated for four counts of rape; one count of arranging to facilitate the control of criminal property; and one count of dishonestly retaining a wrongful credit as

referenced above. The defendant also did not disclose these UK criminal convictions on his U.S. visa applications. PSR ¶ 17.

The defendant further admitted that, on his Form I-589 asylum application filed with USCIS, he knowingly made material false statements under oath about (1) where he had resided from February 1969 to January 2018; and (2) his prior criminal history. PSR ¶ 18.

On July 9, 2019, the defendant pleaded guilty to Count One of the indictment charging him with making a False Statement in an Immigration Document in violation of 18 U.S.C. § 1546(a). The defendant faces a maximum penalty of ten years of imprisonment, a \$250,000 fine, a three-year period of supervised release, and a \$100 special assessment.

The Presentence Report has scored Mr. Katambwa's base offense level as 8 under U.S.S.G. § 2L2.2(a). PSR ¶ 25. With a two-level reduction under U.S.S.G. § 3E1.1 for acceptance of responsibility and a resulting a total offense level of 6, and with a Criminal History Category II, the defendant's Guideline range is 1 to 7 months of imprisonment (sentencing table) and a fine range of \$1,000 to \$9,500, U.S.S.G. § 5E1.2(c)(3). PSR ¶¶ 32, 33, 69. Although the defendant is subject to a supervised release term of one to three years, U.S.S.G. § 5D1.2, the Court does not need to impose a term of supervised release because the defendant is a deportable alien, U.S.S.G. § 5D1.1(c). PSR ¶¶ 72-73.

III. Discussion

A. Legal Standard and 18 U.S.C. § 3553(a)

The Sentencing Guidelines must be considered by the Court along with the other factors listed in 18 U.S.C. § 3553(a). *United States v. Booker*, 543 U.S. 220, 260-61 (2005); *United States v. Crosby*, 397 F.3d 103, 110 (2d Cir. 2005). Ultimately, a district court's sentence is

reviewed for reasonableness. *Booker*, 543 U.S. at 260-61; *Crosby*, 397 F.3d at 114-15. Title 18, United States Code, Section 3553(a) provides, in pertinent part:

(a) Factors to be considered in imposing a sentence.--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 court, in determining the particular sentence to be imposed, shall consider--

(1) the nature and circumstances of the offense and the history and characteristics of the defendant;

(2) the need for the sentence imposed--

(A) to reflect the seriousness of the offense, to promote respect for the law, and to provide just punishment for the offense;

(B) to afford adequate deterrence to criminal conduct;

(C) to protect the public from further crimes of the defendant; and

(D) to provide the defendant with needed educational or vocational training, medical care, or other correctional treatment in the most effective manner;

(6) the need to avoid unwarranted sentence disparities among defendants with similar records who have been found guilty of similar conduct, and

(7) the need to provide restitution to any victims of the offense.

B. A Sentence of Time Served Would Constitute a Just Sentence

The defendant's offense conduct, when considered through the prism of the § 3553(a) factors, supports a sentence at the top of the Guideline range. Such a sentence would properly account for his false statements about his long-term residence and criminal history in the UK that

enabled him to obtain asylee status from the USCIS. A sentence of time served would be appropriate because Katambwa has been in custody since his arrest on February 1, 2019.

1. The Nature and Circumstances of the Offense

Katambwa committed a serious crime when he applied for asylum with USCIS, but knowingly omitted pertinent information about his long-term residence in the UK and, more importantly, his extensive criminal history, particularly his rape and fraud convictions. His conviction for four counts of rape under the “Kaseba Katambwa” identity required him to serve four concurrent sentences of 13 years of imprisonment. The defendant knew that these felony convictions would hurt his chances for U.S. asylum, so he made a conscious attempt to deceive federal immigration authorities by omitting that information. This is a serious immigration crime and merits a sentence at the top of the Guideline range.

2. The Defendant's History and Characteristics

The government acknowledges Katambwa's representations in his sentencing memorandum that he and his family have suffered deeply at the hands of the DRC government based on their political advocacy. However, the record demonstrates that his personal conduct for the last two decades has not been commendable. In the UK, he accumulated two serious fraud convictions for which he was sentenced to significant jail time. Apparently undeterred by those experiences with the UK criminal justice system, he committed four separate acts of rape on a minor victim for which he was convicted and sentenced to four concurrent terms of 13 years. At the end of his term of incarceration, UK immigration authorities denied his asylum application and deported him back to the DRC in November 2017. Mr. Katambwa then proceeded to enter the United States on a temporary work visa in which he falsely stated on the application, among other

things, that he had never been arrested or convicted of any crime. He then amplified these false statements in his asylum application, which led to the instant prosecution. The defendant has exhibited a sustained disrespect for the law, which supports a sentence at the top of the Guideline range.

3. The Sentence Must Promote Specific and General Deterrence, and Respect for the Law

Finally, the Court's sentence must not only deter the defendant from crime, but also promote respect for the law and demonstrate to the general public that the criminal justice system will treat immigration crimes seriously. Section 3553(a) states that the Court must consider the need for the sentence to "afford adequate deterrence to criminal conduct." 18 U.S.C. § 3553(a)(2)(B). There are likely other persons in the community who have made, or are contemplating making, false representations to federal immigration authorities in order to enhance their chances for asylum or another immigration-related benefit. A sentence at the top of the Guideline range would discourage these similarly situated parties from engaging in such illegal conduct in the future.

CONCLUSION

Accordingly, the government respectfully requests that the Court impose a sentence of time served because Katambwa has been in custody since his arrest on February 1, 2019.

Respectfully submitted,

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/s/

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CERTIFICATE OF SERVICE

This is to certify that on October 17, 2019, a copy of foregoing Government's Sentencing Memorandum was filed electronically and served by mail on anyone unable to accept electronic filing. Notice of this filing will be sent by e-mail to all parties by operation of the Court's electronic filing system or by mail to anyone unable to accept electronic filing as indicated on the Notice of Electronic Filing. Parties may access this filing through the Court's CM/ECF System.

/s/ _____

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