

On May 7, 2007, the court held a sentencing hearing. The court has considered the PSR, all of the admissible evidence presented at trial and at the hearing, and the arguments and submissions of counsel. The court enters this order to explain the defendant's sentence.

I.

The Fourth Circuit has described the process for imposing a sentence under the now-advisory sentencing guidelines:

First, the court must correctly determine, after making appropriate findings of fact, the applicable guideline range. Next, the court must determine whether a sentence within that range serves the factors set forth in § 3553(a) and, if not, select a sentence within statutory limits that does serve those factors. In doing so, the district court should first look to whether a departure is appropriate based on the Guidelines Manual or relevant case law If an appropriate basis for departure exists, the district court may depart. If the resulting departure range still does not serve the factors set forth in § 3553(a), the court may then elect to impose a non-guideline sentence (a "variance sentence"). The district court must articulate the reasons for the sentence imposed, particularly explaining any departure or variance from the guideline range. The explanation of a variance sentence must be tied to the factors set forth in § 3553(a) and must be accompanied by findings of fact as necessary. The district court need not discuss each factor set forth in § 3553(a) in checklist fashion; it is enough to calculate the range accurately and explain why (if the sentence lies outside it) this defendant deserves more or less.

United States v. Davenport, 445 F.3d 366, 370 (4th Cir. 2006) (quoting United States v. Moreland, 437 F.3d 424, 432 (4th Cir. 2006)); accord United States v. McClung, 2007 WL 1203018, at *3-4 (4th Cir. Apr. 25, 2007); United States v. Tucker, 473 F.3d 556, 560-61 (4th Cir. 2007). Of course, this court recognizes its duty to impose a sentence sufficient, but not greater than necessary, to comply with the purposes of 18 U.S.C. § 3553(a). See Tucker, 473 F.3d at 561; 18 U.S.C. § 3553(a).

II.

The court accepts as accurate the PSR except as to matters in dispute as set forth in the addendum. See Fed. R. Crim. P. 32(i)(3); cf. PSR ¶¶ 1-32, 37-60, 64-65, 68-69, 72, 74-79, 81-83. During the sentencing hearing and in this order, the court has discussed certain facts as these facts

relate to defendant's objections. Geddings' conduct is described in detail in the PSR. See PSR ¶¶ 9-32. The court summarizes some of that conduct, which centers around Geddings' long-standing friendship with Alan Middleton (who served as Vice President for Governmental Relations of lottery vendor Scientific Games) and Geddings' long-standing financial ties with Scientific Games. See id. ¶¶ 9-14.

Geddings owned and operated a successful public relations firm and performed work as an independent contractor for Scientific Games in 2000, 2001, 2002, 2003, and 2004. The work largely involved or grew out of his relationship with Middleton and Geddings' prior service as Chief of Staff to South Carolina's Governor. See PSR ¶¶ 9-14. Scientific Games paid Geddings (or entities he controlled) \$25,000 in 2000, \$75,000 in 2001, \$30,345 in 2002, \$1,200 in 2003, and \$7,500 in 2004. See, e.g., Gov't Ex. 201. Beginning in May 2003, and continuing through December 2005, Middleton was Vice President for Governmental Relations at Scientific Games. See Gov't Ex. 106. In that role, he sought to get states to enact lottery laws in order to permit Scientific Games to then compete and win lottery contracts awarded by states. The contracts relate to providing instant-ticket and on-line computer systems. See, e.g., Tr. 251-52. Scientific Games has one competitor for such contracts – Gtech.

In March 2005, a lottery in North Carolina remained a possibility on the legislative agenda. The Governor supported a lottery, but it was unclear whether there were sufficient votes to pass a lottery in the General Assembly. See PSR ¶ 15.

In March 2005, Meredith Norris contacted Middleton. Norris had been a top aide to Speaker Jim Black of the North Carolina House of Representatives. See id. ¶ 15. Norris had recently left Speaker Black's staff and was trying to develop a lobbying practice in Raleigh. See id. On March 5, 2005, Middleton met with Norris and Speaker Black. On March 6, 2005, Norris e-mailed

Middleton and proposed that Scientific Games hire her at a salary of \$60,000 through the end of 2005. Her objectives would include having the lottery passed in the General Assembly and having the lottery bill favor Scientific Games. Gov't Ex. 120; see PSR ¶ 15. On March 10, 2005, Middleton asked for authority from his superiors at Scientific Games to hire Norris "to insure passage of a lottery bill." Gov't Ex. 123; see PSR ¶ 15. On March 30, 2005, Scientific Games hired Norris at a rate of \$5,000 per month through December 31, 2005. Gov't Ex. 124.

Norris was actively involved in shepherding Scientific Games' model lottery bill through the House via the Speaker's office. See, e.g., PSR ¶¶ 15-16; Tr. 530-35 (Jessup). On April 6, 2005, the House passed a lottery bill. See PSR ¶¶ 15-16. The next day Geddings e-mailed the Governor's senior political advisor, Mac McCorkle, and said "I have no lottery vendor clients" and stated his desire to be considered for Executive Director of the lottery. Gov't Ex. 277; see PSR ¶ 17; Tr. 1413. On April 12, 2005, Geddings e-mailed McCorkle and told him that he was interested in serving as a North Carolina Lottery Commissioner. Gov't Ex. 309; see PSR ¶ 17; Tr. 1418.

In May 2005, Middleton hired Geddings to help prepare Senator Rand for a lottery debate. See PSR ¶ 18; Gov't Ex. 135. At that time, the lottery bill had not yet passed the Senate. Middleton, Geddings, and Norris met Senator Rand in Fayetteville to prepare him for the debate. See PSR ¶ 18. Scientific Games paid Geddings' company \$5,000 (by check dated June 23, 2005) for this debate preparation work. See id. ¶32.

In July 2005, Scientific Games (through Middleton) hired Geddings as an independent contractor at a rate of \$5,000 per month for public relations work in North and South Carolina. See PSR ¶ 20. On July 15, 2005, and August 1, 2005, Geddings invoiced Scientific Games for \$5,000. See Gov't Exs. 138, 140; PSR ¶ 32; Tr. 300 (Traub). On July 28, 2005, Middleton advised Scientific Games accounting personnel that the company likely would be using Geddings' company

for public relations work in North Carolina for 6-18 months at \$5,000 per month. See Gov't Ex. 139.

In August 2005, the lottery bill had not yet passed the Senate, but lottery supporters still hoped that it might. That month, Geddings helped to prepare radio ads for the North Carolina Association of Educators ("NCAE") and (unbeknownst to NCAE) had Scientific Games pay for the production costs. See PSR ¶ 20; Tr. 830-32 (Banks). The ads targeted senators whom the NCAE believed might switch their vote in the Senate and thereby permit the lottery bill to pass. Geddings invoiced Scientific Games on September 1, 2005, for \$5,000, plus \$4,500 for the ad work. Gov't Ex. 150.

On August 30, 2005, after two senators failed to show up to vote, the lottery bill passed the Senate 25-24, with the Lieutenant Governor casting the deciding 25th vote. See PSR ¶ 21. Before the vote, Geddings e-mailed Middleton and said, "Kimberly Reynolds talked to Rand this morning . . . he's giving odds of 1:1." Gov't Sent. Mem. 15, Ex. A. Geddings then wrote, "[g]et ready to move to Raleigh to do start-up!" Id. On that same date, Geddings e-mailed Norris and said "congratulations on your lottery success. I know Alan [Middleton] is thrilled with your work." Gov't Ex. 443; PSR ¶ 21. On August 31, 2005, the Governor signed the lottery bill into law. See PSR ¶ 21.

On September 6, 2005, Geddings e-mailed Norris about a possible appointment as a Lottery Commissioner. Gov't Ex. 6. He stated that "if you want a foot soldier to serve who will be loyal to the Speaker, keep me in mind." Id. Norris responded that Speaker Black had decided upon his two appointees to the nine-member Commission and neither would be Geddings. See PSR ¶ 21; Gov't Ex. 6.

On September 21, 2005, Norris, Middleton, and Speaker Black dined at a restaurant in North Raleigh. At that point, Speaker Black had recently learned that one man that he planned to appoint to the Commission could not serve. See PSR ¶ 22. Norris, Middleton, and Speaker Black discussed appointing Geddings during dinner. See, e.g., PSR ¶ 22; Gov't Ex. 416. Scientific Games paid for dinner. Gov't Ex. 159. At the end of dinner, Norris e-mailed Geddings from the restaurant with the subject line reading: "PLEASE CALL US/ALAN: IMPORTANT." Gov't Ex. 273; PSR ¶ 22.

On September 22, 2005, Speaker Black offered Geddings the appointment as Commissioner, and he accepted. See PSR ¶ 22. On September 22, 2005, Geddings e-mailed Norris to thank her for her support concerning his position on the Commission. Gov't Ex. 335. On that same date, Geddings' company deposited a \$10,000 check from Scientific Games dated September 2, 2005. The check concerned invoices of July 15, 2005, and August 1, 2005. See PSR ¶¶ 22, 32; Gov't Ex. 151. On September 22, 2005, Middleton e-mailed an accounting person at Scientific Games and said, "[t]he relationship [with Geddings and his entities] has been terminated – on a positive basis. . . . Please process what is in the pipeline and that is it." Def.'s Ex. 05.70(a); Gov't Ex. 197; PSR ¶ 23.

On September 23, 2005, Governor Easley appointed Geddings a Lottery Commissioner. The appointment was effective immediately. See Gov't Ex. 1. The press immediately began investigating Geddings' relationship with Middleton. The press inquiries continued throughout Geddings' six-week tenure on the Commission. See, e.g., Tr. 1926-27. On September 26, 2005, Geddings e-mailed his executive assistant and told her "Pls never acknowledge by phone that sci games is a client" Gov't Ex. 280; PSR ¶ 25.

The Lottery Commission was expected to hold its first meeting on October 6, 2005. On October 4, 2005, Geddings e-mailed a negative article regarding Gtech to Dr. Charles Sanders, the Commission Chairman. Gov't Ex. 424; PSR ¶ 25. On October 4, 2005, Geddings also e-mailed Chairman Sanders and accepted his invitation to serve on the Personnel Subcommittee with Sanders and another commissioner. PSR ¶ 25. Almost immediately, Geddings told Middleton which commissioners comprised the Personnel Subcommittee. Middleton, in turn, e-mailed another Scientific Games' executive on October 4, 2005, and said: "For you info only Bill . . . the personnel subcommittee is headed up by the chairman, Public Safety Secy Beatty, and Kevin." Gov't Ex. 176; PSR ¶ 25. The members of the Personnel Subcommittee were not released to the public until the Lottery Commission's first meeting on October 6, 2005. See PSR ¶ 25; Tr. 1360-61.

At the October 6, 2005, meeting, Perry Newson, Executive Director of the North Carolina's Ethics Commission, provided an ethics presentation and stated as to recusal: "you cannot try to do indirectly what you cannot do directly." PSR ¶ 26; Gov't Ex. 372 at 5. At the meeting, Geddings acknowledged his friendship with Middleton and announced that he would recuse himself as to the final vendor selection. See Gov't Ex. 372 at 3. Geddings did not disclose his financial ties to Scientific Games. After the meeting, Geddings told Chairman Sanders that "no other shoe would drop" about his relationship with Middleton and Scientific Games. PSR ¶ 26.

On October 7, 2005, Geddings' company deposited a check from Scientific Games dated September 23, 2005, in the amount of \$9,500. Gov't Ex. 162. The check concerned an invoice dated September 1, 2005. See Gov't Ex. 150. When coupled with the deposit of a \$10,000 check dated September 2, 2005, and a \$5,000 check dated June 23, 2005, Geddings' company had received \$24,500 from Scientific Games in 2005. See PSR ¶ 32.

On October 7, 2005, Geddings completed an Ethics Form concerning his service as a Commissioner. Question 16 stated:

Having read the Order in general and the “Rules of Conduct for Public Officials” in particular, provide **any other information** which a reasonable person would conclude is necessary or helpful either to carry out the purposes of the Order or to fully disclose any potential conflicts of interest or appearance of a conflict. Identify any conflicts or potential conflicts you may have that are not fully or adequately covered somewhere else in this form. Include an explanation of how you would propose to resolve any conflicts or potential conflicts.

Gov’t Ex. 12 (emphasis original). Geddings answered: “None.” See id.

On October 10, 2005, Newson contacted Geddings about his Ethics Form. PSR ¶ 28; Tr. 1047. Newson had read numerous press accounts about Geddings’ friendship with Middleton and believed that Geddings needed to amend his response to Question 16. See PSR ¶ 28; Tr. 1047-48. Geddings then amended his answer to Question 16 to state:

I have a longstanding friendship and previous business relationship with Mr. Alan Middleton, a vice president with Scientific Games Corp.[,] a potential N.C. Education Lottery vendor. Mr. Middleton and I have been friends since 1987. Between 2000 and 2001 Mr. Middleton’s company, Carolina Public Affairs sublet office space from me. In 2002, he joined Scientific Games. I currently have no business relationship with Mr. Middleton, although he remains a close friend.

I should note as well, that as a former chief of staff to the Governor of South Carolina, I helped with that state’s lottery start-up and enjoyed several opportunities to meet privately with GTech staff and representatives, including Mr. Don Sweitzer, Mr. Ted Riley and Mr. Chris Shaban. I have learned much from listening to the “lessons learned” by executives from both major lottery system companies.

In 2000, my company, Geddings & Phillips Communications, LLC also conducted focus groups of potential lottery customers in South Carolina for a lottery vendor company known then as IGT-Anchor Gaming. IGT-Anchor Gaming was later purchased by Scientific Games.

My company, Geddings & Phillips Communications, along with my two radio stations WXNC-AM in Monroe, NC and WKMT-AM in Kings Mountain, NC have no current business relationships with any lottery vendor. Although I am in the

process of selling my two radio stations, I pledge to not accept any lottery advertising contracts for these stations or any others I may own during the term on the Education Lottery Commission.

In addition, to avoid even the “appearance” of unfair vendor consideration, I will not vote on any final vendor contract award that involves Scientific Games or GTech.

Gov’t Ex. 8 at 3.

On October 12, 2005, Geddings e-mailed another negative article about Gtech to Chairman Sanders. See PSR ¶ 29; Gov’t Ex. 306; Tr. 1371. On October 14, 2005, Geddings e-mailed Chairman Sanders about how to structure the lottery contract and proposed that the commissioners (instead of the Executive Director) select the lottery’s high-level employees. See Gov’t Ex. 310; PSR ¶ 29; Tr. 1374. Throughout October, the press continued to raise questions about Geddings’ relationship with Middleton. See, e.g., Tr. 1926-27.

On October 27, 2005, Geddings had a telephone call with Ira Raphaelson and Larry Potts. See PSR ¶ 30. Raphaelson was outside counsel to Scientific Games and Potts was their Vice President of Security and Compliance. Raphaelson advised Geddings that Scientific Games was about to make a public filing concerning the \$24,500 that Scientific Games had paid his companies in 2005. Geddings objected to the disclosure and stated that he had not disclosed the payments. Further, he said that if he had disclosed the payments, he never would have been appointed a Commissioner. See Tr. 968-70 (Raphaelson); Tr. 2396-99 (Potts).

Although Geddings knew that Scientific Games was about to publicly file documents concerning the \$24,500, Geddings participated in a Personnel Subcommittee meeting with Chairman Sanders and Commissioner Beatty on October 31, 2005. See PSR ¶ 31. In that meeting, they selected the finalists to be interviewed for the Executive Director position. See PSR ¶ 31. Geddings never informed the other two Commissioners that Scientific Games was about to make a public filing concerning the \$24,500. See PSR ¶ 31.

On November 1, 2005, Geddings resigned as a Lottery Commissioner due to “the persistent negative publicity surrounding my decades-long friendship with a lottery company worker.” Gov’t Ex. 364; see PSR ¶ 31. Shortly thereafter, Scientific Games made public the payments. At trial, Newson testified that had he known about the \$24,500 that Scientific Games paid Geddings in 2005, then he (Newson) would have found that Geddings had an actual conflict of interest. See Tr. 1057-58. Newson further testified that the actual conflict would have been disqualifying as to Geddings’ service because of the unique nature of the lottery industry - i.e., Scientific Games and Gtech are the only two competitors for lottery contracts. See Tr. 1078-80.

III.

For purposes of the advisory guideline calculations the court has used the Guidelines Manual effective November 1, 2006. The base offense level for violation of 18 U.S.C. § 1341 is 14. See U.S.S.G. § 2C1.1. The PSR adds a four-level enhancement pursuant to sections 2C1.1(b)(2) and 2B1.1(b)(1)(C) based on Geddings’ receipt of \$24,500 from Scientific Games in 2005. See PSR ¶ 62. The PSR adds another four-level enhancement pursuant to section 2C1.1(b)(3) due to Geddings’ position as a “public official in a high-level decision-making or sensitive position.” See PSR ¶ 63. The PSR adds a two-level enhancement pursuant to section 3C1.1 for obstruction or impeding the administration of justice pursuant to U.S.S.G. § 3C1.1. See PSR ¶ 66. Accordingly, the PSR calculates a total offense level of 24 and a criminal history category of I, yielding an advisory guideline range of 51-63 months imprisonment.

Defendant makes four objections to the PSR. These objections concern PSR paragraphs 33-36, 61, 62, 63, 66, and 70. See PSR Add. First, defendant argues that section 2C1.3 (as opposed to section 2C1.1) of the guidelines should be used to determine the base offense level. See PSR Add. ¶ 1. Second, defendant argues that Geddings’ receipt of \$24,500 from Scientific Games in

2005 does not constitute “the value of anything” that Geddings obtained “from the offense” under U.S.S.G. § 2C1.1(b)(2); therefore, a four-level enhancement is unwarranted. Id. ¶ 2; see Def.’s Sent. Mem. 2-16. Third, defendant argues that as a North Carolina Lottery Commissioner, Geddings was not a public official in a high-level decision-making or sensitive position under U.S.S.G. § 2C1.1(b)(3). PSR Add. ¶ 3; see Def.’s Sent. Mem. 16-25. Finally, defendant argues that he did not obstruct or impede justice under U.S.S.G. § 3C1.1. PSR ¶ 4; see Def.’s Sent. Mem. 26-49.

A.

Defendant argues that the PSR incorrectly cites section 2C1.1 to establish the base offense level. Instead, defendant argues that the court should use section 2C1.3 because section 2C1.3 “concerns failures to disclose conflicts of interest.” PSR Add. ¶ 1 (discussing United States v. Hasner, 340 F.3d 1261 (11th Cir. 2003) (per curiam)).

The jury convicted defendant of five counts of honest services mail fraud in violation of 18 U.S.C. § 1341. The plain language of section 2C1.1 demonstrates that it governs honest services fraud cases, including this one. Part C of Section 2 of the Guidelines is entitled “Offenses Involving Public Officials and Violations of Federal Election Campaign Laws.” In turn, section 2C1.1’s title expressly references “Fraud Involving the Deprivation of the Intangible Right to Honest Services of Public Officials.” See U.S.S.G. § 2C1.1. Moreover, the Guideline’s statutory index lists section 2C1.1 as the section corresponding to a violation of 18 U.S.C. § 1341. See id. App. A, p. 528.¹ Further, the background commentary to section 2C1.1 states that “[s]ection 2C1.1 . . . applies to fraud involving the deprivation of the right to honest services of government officials under 18 U.S.C. §§ 1341-1343.” Id. § 2C1.1 (Background). Thus, section 2C1.1 provides the base offense level.

¹Appendix A also lists U.S.S.G. § 2B1.1. See U.S.S.G. App. A, p.528. For purposes of this case, however, section 2B1.1 relates to calculating an enhancement under section 2C1.1(b)(2).

In opposition to this conclusion, defendant cites Hasner and argues that the court should use section 2C1.3. Hasner, however, arose before the Sentencing Commission consolidated several official misconduct guidelines into section 2C1.1 in 2004. See id. App. C, Amendment 666 (effective Nov. 1, 2004). The court does not believe that Hasner provides a basis for exercising discretion to select either 2C1.1 or 2C1.3. In any event, even if Hasner and defendant's proposed construction of the guidelines provides such discretion, the court believes (in light of the evidence received at trial) that the appropriate guideline to establish the base offense level is section 2C1.1. Accordingly, defendant's objection to using U.S.S.G. § 2C1.1 to establish the base offense level is overruled.

B.

Next, defendant objects to the four-level enhancement pursuant to U.S.S.G. § 2C1.1(b)(2). PSR Add. ¶ 2. Section 2C1.1(b)(2) provides:

If the value of the payment, the benefit received or to be received in return for the payment, the value of anything obtained or to be obtained by a public official or others acting with a public official, or the loss to the government from the offense, whichever is greatest, exceeded \$5000, increase by the number of levels from the table in § 2B1.1 (Theft, Property destruction, and fraud) corresponding to that amount.

U.S.S.G. § 2C1.1(b)(2).

The PSR states that the \$24,500 Geddings received from Scientific Games in 2005 constitutes the "value of anything obtained" by Geddings. PSR ¶ 62. The PSR states that Geddings obtained the \$24,500 after Geddings' scheme concerning the North Carolina Lottery Commission began and "his allegiance to Scientific Games was established." PSR Add. ¶ 2 (Probation's Response). Defendant argues that he should not receive any enhancement under section 2C1.1(b)(2). See Def.'s Sent. Mem. 2-15. Essentially, defendant argues that Geddings did not receive or obtain

the payments from Scientific Games “from the offense.” He argues that his “offense” did not arise until he had a duty of honest services and that duty did not arise until his appointment on September 23, 2005. He also argues that Scientific Games did not pay him any money for services while on the Commission and that the money he did receive after his appointment was for an invoice prepared and sent before his appointment. Id.; PSR ¶ 32; see U.S.S.G. § 2C1.1(b)(2); United States v. Ellis, 951 F.2d 580, 585 (4th Cir. 1991), superseded by statute as stated in United States v. Kinter, 235 F.3d 192 (4th Cir. 2000); see also United States v. Griffin, 324 F.3d 330, 366-67 (5th Cir. 2003); United States v. Gabel, 85 F.3d 1217, 1223 (7th Cir. 1996). Thus, defendant contends that no enhancement is proper under section 2C1.1(b)(2).

The government responds that defendant erroneously relies “on cases that fit the classic bribery paradigm wherein a private entity pays a public official after he is in office to induce official action. The government has never argued that this is such a case. In this case, the defendant defrauded the citizens of North Carolina of the right of honest services by successfully seeking and holding the office of Lottery Commissioner while under an egregious conflict of interest created by payments that he had largely already received before taking office, and which he concealed, even though such prior payments, if known, would have clearly disqualified him from said office.” Gov’t Resp. 9-10 (citations and footnote omitted). The government then argues:

Once Geddings became a lottery commissioner and took official action in that office, all the while concealing the payments that he had received from Scientific Games [from 2000 to 2005], which is the gravamen of his offense, then his situation is not meaningfully different from that of a public official who receives payments after taking office from a corporation with an interest in governmental action related to the public official’s office. So, the most accurate measure of “the value of the payment[s]” or “the value of anything obtained . . . by the public official” is the \$163,545 that Geddings received from Scientific Games from 2000 to 2005.

Gov’t Resp. 10-11 (footnote omitted).

Resolving this dispute greatly impacts the advisory guideline range. If the court were to adopt the government's conclusion and overrule the defendant's other objections, defendant's advisory guideline range (before any departures) would be 97-121 months. If the court adopts the defendant's conclusion and overrules the defendant's other objections, defendant's advisory guideline range (before any departures) would be 33-41 months.

The court agrees that this case does not fit the classic bribery paradigm. The court also agrees that its ruling on the Rule 29 motion concerning counts 6 and 7 does not necessarily compel the conclusion that "the value" amount under section 2C1.1(b)(2) must be zero. See U.S.S.G. §§ 1B1.3, cmt. n.1 and 1B1.3(a)(2). Moreover, the court does believe that "the scheme" arose well before Geddings was appointed a commissioner, but that his duty of honest services (on the evidence presented) did not arise until his appointment on September 23, 2005.

The court has reviewed the cases that the parties cited and conducted its own research concerning section 2C1.1(b)(2) and the Guidelines. The court also has reflected on the evidence presented during the lengthy trial. In light of the evidence presented and the court's interpretation of the Guidelines, the court declines to add an enhancement under section 2C1.1(b)(2). Instead, the court will consider "the scheme" in its overall consideration of possible departures and all relevant factors under section 3553(a).

C.

Next, defendant objects to the four-level enhancement pursuant to U.S.S.G. § 2C1.1(b)(3). See PSR Add. ¶ 3; Def.'s Sent. Mem. 16-25. Section 2C1.1(b)(3) provides: "If the offense involved . . . any public official in a high-level decision-making or sensitive position, increase by 4 levels." U.S.S.G. § 2C1.1(b)(3). "'High-level decision-making or sensitive position' means a position characterized by authority to make decisions for, or on behalf of, a government department, agency,

or other entity, or by a substantial influence over the decision-making process.” Id. cmt. n.4(A).

Defendant argues that his position as a North Carolina Lottery Commissioner did not constitute “a high-level decision-making or sensitive position.” See Def.’s Sent. Mem. 16-25. The government responds that “defendant’s position as a Lottery Commissioner, constituted both a high-level decision-making position and a sensitive position.” See Gov’t Sent. Mem. 18-21; Gov’t Resp. 12-14.

In light of the evidence, the court finds that Geddings held a high-level decision-making position under section 2C1.1(b)(3). Lottery commissioners are appointed by the Governor, the Speaker of the House, and the President Pro Tempore of the Senate. See N.C. Gen. Stat. § 18C-111; Gov’t Ex. 264. Under N.C. Gen. Stat. § 18C-111, the Governor selects five commissioners, the Speaker of the House selects two commissioners, and the President Pro Tempore of the Senate selects two commissioners.² The Lottery Commission is a decision-making body. It falls under the “Department of Commerce for budgetary purposes only; otherwise, the Commission shall be an independent, self-supporting, and revenue-raising agency of the State.” N.C. Gen. Stat. § 18C-110; Gov’t Ex. 264. Because of its independence and the need to be financially self-supporting, the legislature provided the Lottery Commission with extraordinary powers. The Commission’s powers and duties include, in part: (1) to specify the types of lottery games and gaming technology to be used in the lottery; (2) to prescribe the nature of lottery advertising; (3) to specify the number and value of prizes for winning tickets or shares in lottery games; (4) to determine the salary of the Director and the terms and conditions for employment contracts for the Director; (5) to specify the authority, selection, and role of the other employees of the Commission; (6) to determine the

²Technically, the Speaker of the House and the President Pro Tempore each nominate two people, and the General Assembly appoints their nominees. See N.C. Gen. Stat. § 18C-111(a).

incentives, if any, for any lottery employees, lottery vendors, lottery contractors, or electronic computer terminal operators; and (7) any other powers necessary for the Commission to carry out its responsibilities under this Chapter. See N.C. Gen. Stat. § 18C-114(a) (quotations omitted); Gov't Ex. 264. The Commission also is empowered to select “a Director to operate and administer the Lottery and to serve as the Secretary of the Commission.” N.C. Gen. Stat. § 120(a); Gov't Ex. 264 at 4. Although the Director has powers, the Director exercises these powers “under the supervision of the Commission.” N.C. Gen. Stat. § 18C-120(b); Gov't Ex. 264 at 4. In short, the Commission (through the commissioners) is responsible for the overall operation of North Carolina's lottery — a multi-million dollar agency of the state.

Geddings attempts to minimize the decision-making authority of the Commission and its Commissioners. However, just because Geddings was one of nine commissioners, does not preclude his status as a high-level decision-maker under section 2C1.1(b)(3). See, e.g., United States v. Snell, 152 F.3d 345, 347-48 (5th Cir. 1998) (a juror holds a high-level decision-making or sensitive position); United States v. Paradies, 98 F.3d 1266, 1292 (11th Cir. 1996) (member of the Atlanta City Council holds a high-level decision-making or sensitive position). Moreover, the evidence demonstrates that Geddings (during his short tenure on the Commission) sought to exert “substantial influence over the [Commission's] decision-making process” with respect to many aspects of the lottery, including the lottery vendor selection process and selection of key lottery personnel. U.S.S.G. § 2C1.1(b)(3), cmt. n.4(A). For example, Geddings suggested to Chairman Sanders how to structure the bid process for the lottery vendor contract. See Gov't Ex. 310. He suggested that the Commission consider being open to selecting a Director with no lottery experience. See Gov't Ex. 297; cf. N.C. Gen. Stat. § 18C-103(3) (Commission selects Director). He recommended that the commissioners screen the applicants for other senior lottery positions and

then “the Ex Dir can select . . . from finalists we have selected.” Gov’t Ex. 310 at 2. There are numerous other examples in the record that demonstrate that Geddings as a commissioner was in a high-level decision-making position. Accordingly, the court finds that Geddings during his tenure as a North Carolina Lottery Commissioner was in a high-level decision-making position pursuant to section 2C1.1(b)(2).

Alternatively, the court finds that Geddings’ position as a Lottery Commissioner constituted a “sensitive position” pursuant to section 2C1.1(b)(2). See United States v. ReBrook, 58 F.3d 961, 969-70 (4th Cir. 1995) (attorney to Director of the West Virginia Lottery Commission holds a “sensitive position” due to his influence with the Director and other Commission members and his access to confidential information concerning the lottery); United States v. Tomblin, 46 F.3d 1369, 1391 (5th Cir. 1995) (top administrative aide to a United States Senator holds a “sensitive position” because the aide holds a position of substantial influence and often serves as the Senator’s functional equivalent at meetings); United States v. Matzkin, 14 F.3d 1014, 1021 (4th Cir. 1994) (supervisory engineer in the Navy was in a “sensitive position” in that he was on a three-member committee that made recommendations to Navy officials on large Navy procurements). The record establishes that the commissioners (including Geddings) held some portions of meetings in “closed” session and had access to sensitive non-public information about the North Carolina Lottery. See, e.g., Gov’t Ex. 288; Tr. 1353, 1360, 1325-28. Moreover, Chairman Sanders testified that because Geddings “appeared to be the most knowledgeable about the business of the lottery . . . he would have a prominent place in the deliberations of the commission.” Tr. 1361-62. Accordingly, defendant’s objection to the four-level enhancement pursuant to U.S.S.G. § 2C1.1(b)(3) for occupying a high-level decision-making or sensitive position is overruled.

D.

Next, defendant objects to the two-level enhancement pursuant to U.S.S.G. § 3C1.1 for obstruction of justice. PSR Add. ¶ 4; Def.'s Sent. Mem. 26-49. The PSR identified what it contends are false statements that Geddings made during his trial testimony regarding his actions while head of South Carolinians for an Effective Lottery and concerning his answer to Question 11 on his Ethics Form. See PSR ¶¶ 33-35. On April 19, 2007, the court notified the parties that it was considering the same enhancement for different testimony that Geddings provided during trial. See United States v. Geddings, No. 5:06-CR-136-D3, Order (E.D.N.C. Apr. 19, 2007). Specifically, the court stated:

It appears that Kevin Geddings committed perjury during his trial testimony in at least the following ways: (1) testifying that he believed, based on his October 10, 2005, conversation with Perry Newson (the Executive Director of the North Carolina Board of Ethics), that Perry Newson's "newspaper rule" meant that his amended Ethics Statement should simply track the information in the media; (2) denying that he told Ira Raphaelson and Larry Potts on October 27, 2005, that if he (Geddings) had disclosed his work with Scientific Games, then he would not have gotten the Lottery Commission position; (3) denying an intent to defraud the people of North Carolina in connection with Gov. Exs. 1-5; and (4) testifying that he did not exercise favoritism towards any party (including Scientific Games) while a Commissioner.

See id. at 1-2.

Under section 3C1.1, "[i]f (A) the defendant willfully obstructed . . . the administration of justice with respect to the investigation, prosecution, or sentencing of the instant offense of conviction, and (B) the obstructive conduct related to (i) the defendant's offense of conviction and any relevant conduct; or (ii) a closely related offense, increase by 2 levels." U.S.S.G. § 3C1.1. Conduct covered includes "committing, suborning, or attempting to suborn perjury." Id. cmt. n.4(b); United States v. Dunnigan, 507 U.S. 87, 94 (1993); United States v. Godwin, 272 F.3d 659, 671 (4th Cir. 2001).

The definition of perjury under the guidelines corresponds to the federal criminal statute criminalizing perjury. See Dunnigan, 507 U.S. at 94. “For a sentencing court to apply the obstruction of justice enhancement based on perjury, the sentencing court, by a preponderance of the evidence, must find three elements: (1) the defendant gave false testimony, (2) concerning a material matter, (3) with the willful intent to deceive (rather than as a result of confusion, mistake, or faulty memory).” United States v. Sun, 278 F.3d 302, 314 (4th Cir. 2002); see also United States v. Quinn, 359 F.3d 666, 681 (4th Cir. 2004); United States v. Jones, 308 F.3d 425, 428 (4th Cir. 2002); United States v. Stotts, 113 F.3d 493, 498 (4th Cir. 1997); United States v. Cook, 76 F.3d 596, 605-06 (4th Cir. 1996).

Initially, the court considers whether Geddings committed perjury when he testified, based on his October 10, 2005, conversation with Perry Newson (the Executive Director of the North Carolina Board of Ethics), that he understood Newson’s “newspaper rule” to mean that Geddings’ amended Ethics Statement should simply track the information in the media. See Tr. 2043, 2254. Geddings gave this testimony on cross examination after initially testifying that he failed to disclose his receipt of payments from Scientific Games because Newson instructed Geddings to limit his amendment to Question 16 on the Ethics Form to what appeared in the newspaper. See Tr. 1918, 1927, 1929, 2045-46; Gov’t Ex. 12, at 6.

The court has considered Geddings’ trial testimony. The court also has considered Newson’s trial testimony concerning the October 10, 2005, conversation and Newson’s statements to the Commission (including Commissioner Geddings) at the Commission’s October 6, 2005, meeting. See Tr. 1046-47, 1076. The court also has considered its ability to infer from disbelieved testimony whether such testimony is materially false. Cf. United States v. Mejia, 82 F.3d 1032, 1038 (11th Cir. 1996) (“A proper inference the jury can make from disbelieved testimony is that the

opposite of the testimony is true.”). In light of the above and the court’s observations of the witnesses during trial, the court finds that Geddings’ testimony about the “newspaper rule” was false, concerned a material matter, and was made with the willful intent to deceive (rather than as a result of confusion, mistake, or faulty memory). See, e.g., Dunnigan, 507 U.S. at 94; Sun, 278 F.3d at 314. The materiality of the testimony relates to Geddings’ intent to abide by his duty of honest services to the citizens of North Carolina.

Next, and alternatively, the court considers whether the defendant committed perjury when he denied that he told Ira Raphaelson and Larry Potts that if he (Geddings) had disclosed his work with Scientific Games, then he would not have gotten the Lottery Commission position. Raphaelson, then-outside counsel to Scientific Games, and Potts, Vice President of Security and Compliance for Scientific Games, testified that on October 27, 2005, they spoke with Geddings by telephone from Scientific Games’ headquarters in New York. See Tr. 968 (Raphaelson); Tr. 2396 (Potts). Raphaelson and Potts testified that during that conversation Raphaelson asked Geddings whether “he had disclosed to the Lottery Commission his (Geddings’) work for [Scientific Games] with Alan Middleton.” Tr. 969 (Raphaelson); Tr. 2397-98 (Potts). Raphaelson testified that Geddings asked whether Scientific Games intended to turn over documents to North Carolina authorities showing that Geddings and Scientific Games had a financial relationship. See Tr. 969-70. Raphaelson told Geddings that Scientific Games intended to turn over the documents regarding the \$24,500 and asked Geddings if that would be a problem. Tr. 970. Raphaelson testified that Geddings responded “yes, that is a problem . . . if I had [disclosed my work for Scientific Games], I wouldn’t have gotten the position. He went on to say if we turned over the documents and the documents became public, that he was done as a commissioner.” Tr. 970; see also Gov’t Resp. 20-21 & Gov’t Ex. A. Potts corroborated Raphaelson’s testimony concerning the conversation. See Tr. 2396-99.

On cross examination, Geddings was asked if he had told Raphaelson that if he (Geddings) had disclosed Scientific Games' 2005 payments to him, he would never have been appointed to the Commission. Tr. 2258. Geddings responded, "that's not - that doesn't sound like me and I did not say that." Tr. 2259.

In light of the court's observations of the witnesses during trial and the evidence presented, the court credits the testimony of Raphaelson and Potts. Further, the court finds that Geddings gave false testimony, concerning a material matter, with the willful intent to deceive (rather than as a result of confusion, mistake, or faulty memory). See Dunnigan, 507 U.S. at 94; Sun, 278 F.3d at 314. As for materiality, Geddings' testimony concerning this conversation with Raphaelson goes to defendant's intent to abide by his duty of honest services.

Next, and alternatively, the court considers whether Geddings testified falsely that he did not exercise favoritism towards any party (including Scientific Games) while he was a commissioner. See Tr. 2277. The court finds that, while a commissioner, Geddings repeatedly e-mailed negative articles about Gtech to Chairmen Sanders and other commissioners. See, e.g., Gov't Exs. 306, 424. Notably, after Geddings was appointed due to the crucial assistance of Middleton and Norris of Scientific Games, Middleton immediately tried to hide his role in having Geddings appointed. See Gov't Ex. 196. Additionally, during his tenure as commissioner, Geddings repeatedly tried to hide his true relationship with Scientific Games including, at a minimum, a substantial receivable owed to his company for work performed just prior to his appointment and paid after his appointment. See, e.g., PSR ¶ 32. Further, while a commissioner, Geddings provided confidential information to Middleton. See, e.g., Gov't Exs. 176, 288. Additionally, Geddings' telephone records reflect almost daily conversations with Middleton during his entire tenure as a commissioner. See Gov't Exs. 340-42. Accordingly, the court finds that Geddings' testimony was false, concerned a material

matter, and was made with the willful intent to deceive (rather than as a result confusion, mistake, or faulty memory). See, e.g., Dunnigan, 507 U.S. at 94; Sun, 278 F.3d at 314.

As to this finding, defendant argues (among other things) that the jury's acquittal as to count nine means that the jury did not believe Geddings exhibited favoritism towards Scientific Games in sending articles to Chairman Sanders and other commissioners. See Def. Mem. 47-49. Count nine was an honest services wire fraud count based on a newspaper article that Geddings e-mailed on October 13, 2005, to the commissioners. See Gov't Ex. 9.

The court disagrees with defendant's argument. As to count nine, the jury may have found the particular article in exhibit nine was not a negative article towards Gtech or a positive article towards Scientific Games and was not sent with criminal intent. Such a finding would have provided the jury a basis to acquit as to count nine. Notably, in the court's view, the article simply discusses the start-up of the Oklahoma lottery and recounts personal anecdotes of people who bought lottery tickets on the first day of the Oklahoma lottery. The defendant e-mailed the article to the commissioners on October 13, 2005, with the message: "One day next year, this will be us" Gov't Ex. 9. In sum, the court rejects the suggestion that simply because the jury acquitted Geddings on count nine, then the jury did not believe that Geddings displayed favoritism towards Scientific Games during his tenure as a commissioner.

Next, the court considers whether Geddings committed perjury in connection with his testimony about his response to Question 11 of the Ethics Form, which covers sources of income. See Gov't Ex. 2. Geddings testified that in 2005 he was not receiving a salary from any source other than from his communications company or his broadcasting company. See Tr. 1913. Geddings, however, had earned a substantial salary from Just Care, Inc. ("Just Care") in 2005. See Gov't Ex. 430 at 30. Just Care was a company based in Alabama that competed for government contracts to

provide prison medical care. Tr. 2358-2359. Geddings had developed a relationship with Just Care when Geddings was working in South Carolina. See Tr. 2359. Geddings duties included hiring lobbyists for Just Care. See, e.g., PSR ¶ 34; Tr. 2359.

Having observed Geddings' testify, the court finds that Geddings' testimony in connection with his response to Question 11 was false, concerned a material matter, and was given with the willful intent to deceive (rather than as a result of confusion, mistake or faulty memory). See, e.g., Dunnigan, 507 U.S. at 94; Sun, 278 F.3d at 314. The answer was material because his perjury in connection with Question 11 undercuts his claim that he failed to respond to Question 16 properly due to confusion or alleged ambiguity in the Question. See Gov't Ex. 12. All of this evidence goes to defendant's intent.

Finally, the PSR and the parties discuss extensively whether Geddings gave false testimony in connection with South Carolinians for an Effective Lottery and money that he received from Scientific Games and Just Care in 2001. See PSR Add. ¶ 4 (Probation's Response); Gov't Sent. Mem. 23-25; Def.'s Sent. Mem. 29-37; Gov't Resp. 16-18. Although the court agrees with the analysis in the PSR, it need not address the issue. Further, the court notes that none of the court's perjury findings as to the defendant relate to any statements that he made to the media – whether such statements were true or false. Cf. Def.'s Sent. Mem. 34-37.

In light of the court's findings, the court overrules defendant's objections to a two-level enhancement under section 3C1.1. Accordingly, a two-level enhancement applies.

E.

When defendant's base offense level of 14 is added to a 4 level increase under section 2C1.1(b)(3) and a 2 level increase under section 3C1.1, the defendant's total offense level becomes

20. When that offense level is coupled with his criminal history category I, the defendant's advisory guideline range is 33-41 months.

IV.

The court must determine whether a sentence within the advisory guideline range serves the factors set forth in 18 U.S.C. § 3553(a), and, if not, select a sentence within statutory limits that does serve those factors. In doing so, the court first looks to whether a departure is appropriate based on the sentencing guidelines or relevant case law. See, e.g., Tucker, 473 F.3d at 560; Davenport, 445 F.3d at 370. The government moves conditionally for an upward departure and/or an upward variance from the guidelines established at sentencing. See Gov't Sent. Mem. 30-31. The government argues that if the court rejects its argument that Geddings obtained \$163,545 in value under section 2C1.1(b)(2), the court should upwardly depart to establish a guideline range that would be the "functional equivalent of a public official who has taken a bribe" worth \$163,545. See id. The government reasons that if the court finds that Geddings received less than \$163,545 in value, "the monetary value of the unlawful payment . . . may not adequately reflect the seriousness of the offense." Id. 30; see U.S.S.G. § 2C1.1, cmt. n.7. The government also argues that an upward departure is warranted because Geddings' conduct "was part of a systematic or pervasive corruption that may cause loss of public confidence in government." Gov't Sent. Mem. 30; U.S.S.G. § 5K2.7.

Defendant opposes the motion and requests a downward departure. In opposing the upward departure, defendant argues that the offense conduct adequately takes into account the severity of defendant's actions. See Def.'s Sent. Mem. 49-59. In support of his motion for a downward departure, defendant argues that his conduct falls outside the heartland of honest services fraud cases and that he is the "irreplaceable . . . primary care giver to his autistic son and insulin-dependent diabetic wife." See Def.'s Mot. for Downward Variance.

Although the questions are close, the court exercises its discretion and denies the government's motion to upwardly depart. Instead, the court will consider the value-related issue, the seriousness of the offense, the loss of public confidence, and the disruption or harm to the government as part of the court's consideration under section 3553(a).

The court has considered defendant's motion for a downward departure based on his family ties and responsibilities and the alleged non-heartland nature of the offense. Although the issues involving the defendant's family are serious, the court does not believe that the requested downward departure is appropriate based on the evidence presented. The court rejects the defendant's non-heartland argument. Thus, in its discretion, the defendant's motion for a downward departure is denied. See, e.g., U.S.S.G § 5H1.6; Elliott v. United States, 332 F.3d 753, 768 (4th Cir. 2003). The court will, however, consider defendant's family ties and responsibilities and the nature of the offense as part of the court's consideration under section 3553(a).

In light of the court's rulings as to departures, the court finds that defendant's offense level is 20, his criminal history level is I. Thus, defendant's advisory guideline range is 33-41 months.

V.

The court next considers whether the resulting advisory guideline range still does not serve the factors set forth in 18 U.S.C. § 3553(a). See, e.g., Tucker, 473 F.3d at 560; Davenport, 445 F.3d at 370. In fashioning a sentence under 18 U.S.C. § 3553(a), a court "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; (D) to provide the defendant with needed educational or vocational training, medical care, or other correctional treatment in the most

effective manner” 18 U.S.C. § 3553(a)(1)-(2). Section 3553(a) lists other factors as well. Although the court will not discuss those other factors, the court has considered all of them (as appropriate) in fashioning a sentence “sufficient, but not greater than necessary to comply with the purposes set forth in paragraph (2) of [18 U.S.C. § 3553(a)].” Id. § 3553(a).

As for the nature and circumstances of the offense, a jury convicted the defendant of five counts of a scheme and artifice to deprive the people of North Carolina of the right to honest services through mail fraud and aiding and abetting in violation of 18 U.S.C. §§ 1341, 1346 & 2. See Gov’t Exs. 1-5. The court described the scheme previously, including the nature and circumstances of the offenses.

As for the defendant, he is 42 years old and married with two children. His wife has type I diabetes. She is a successful businesswoman. The defendant’s teenage son has autism and depends on his father. The defendant also has a daughter. The court has received, reviewed, and taken into account an extensive report about defendant’s family, including his wife and son’s medical conditions.

Defendant received an undergraduate degree from Wofford College in South Carolina, was an outstanding student, and later received a master’s degree from George Washington University. He started Geddings & Phillips Communications with his wife and developed it into a highly successful public relations and political consulting firm. He and his wife later transitioned to the broadcasting industry, where they continue to enjoy business success. Geddings has no prior criminal record and now lives with his family in Florida. Numerous people have written to attest to the defendant’s moral character, good works, strong faith, and community involvement.

As for the need of the sentence to reflect the seriousness of the offenses, the court views the offenses very seriously. The defendant’s criminal conduct involved more than simply failing to fill

out his Ethics Forms properly. Cf. Def. Sent. Mem. 8; Def. Motion for Downward Departure 21. Rather, he violated his duty of honest services by failing to disclose and deliberately concealing his true relationship with Scientific Games. He also misled Chairman Sanders. Further, the court finds that the defendant's conduct caused serious doubts about the lottery's management at the lottery's inception. This caused a loss of public confidence in the lottery's management and in the Commission. Defendant's conduct seriously disrupted and harmed Chairman Sanders' efforts to launch the lottery effectively and harmed the lottery. Defendant's conduct also harmed North Carolina because, in essence, his conduct resulted in North Carolina only having one company (i.e., Gtech) be able to compete effectively for the lottery contract.

As for imposing a sentence that provides just punishment, the court has considered the defendant's felony convictions and has considered the defendant's perjurious testimony. The court has balanced those factors against the serious family issues referenced in his motion for a downward departure and referenced in the report about defendant's family. The court also has taken into account that until these events, the defendant has lived a law-abiding and productive life.

As for imposing a sentence that affords adequate deterrence, government exhibit five is defendant's oath of office. The oath formed the basis of count 5. The oath reads:

I, Kevin Geddings, do solemnly swear (affirm) that I will support the Constitution of the United States.

I, Kevin Geddings, do solemnly swear (affirm) that I will be faithful and bear true allegiance to the State of North Carolina, and to the constitutional powers and authorities which are or may be established for the government thereof; and that I will endeavor to support, maintain and defend the Constitution of said state, not inconsistent with the Constitution of the United States.

I, Kevin Geddings, do solemnly swear (affirm) that I will well and truly execute the duties of my office as a member of the North Carolina State Lottery Commission according to the best of my skill and ability, according to law, so help me God.

Gov't Ex. 5. The defendant repeatedly lost sight of this oath during his service. The defendant also repeatedly lost sight of the oath he took before testifying at trial. The court believes that it is necessary to deter others from engaging in defendant's conduct both as to the offenses of conviction and his repeated perjury at trial.

The court also has considered the need for the sentence to protect the public from further crimes of the defendant. Based on the record, the court finds that the defendant is unlikely to commit other crimes.

In light of all the section 3553(a) factors, the court finds that an upward variance sentence is appropriate to meet the goals of section 3553(a). See, e.g., McClung, 2007 WL 1203018, *3-4. The court has already described its analysis of the section 3553(a) factors. Two factors in particular stand out with respect to a variance: (1) the need for deterrence and (2) the loss of public confidence about the lottery's management and harm to the lottery at its inception. These factors as applied here make this case unique. When these factors are coupled with all of the other section 3553(a) factors described above, the court finds that a seven-month upward variance from the top of the 41-month advisory guideline range is appropriate.

VI.

In fashioning the sentence, the court has considered all of the factors set forth in 18 U.S.C. § 3553(a). For the reasons explained earlier, it is the judgment of this court that defendant Kevin L. Geddings is hereby committed to the custody of the Bureau of Prisons for a term of 48 months on counts 1-5 to be served concurrently.³

³Alternatively, the court finds that even if it has incorrectly determined the advisory guideline range, the court would still impose the same sentence. See 18 U.S.C. § 3553(a); cf. United States v. Keene, 470 F.3d 1347, 1348-50 (11th Cir. 2006) (describing process of announcing a post-Booker alternative sentence). In light of the record and all of the factors in 18 U.S.C. § 3553(a), such a

Upon release from imprisonment, the defendant shall be placed on supervised release for a term of 2 years on counts 1-5 to run concurrently. Within 72 hours of release from the custody of the Bureau of Prisons, the defendant shall report in person to the probation office in the district to which the defendant is released. While on supervised release, the defendant shall not commit another federal, state, or local crime, and shall not illegally possess a controlled substance. The defendant shall not possess a firearm or destructive device. Further, the defendant shall comply with the standard conditions that have been adopted by this court, and shall cooperate in the collection of DNA as directed by the probation officer. The drug testing condition required by 18 U.S.C. § 3608 is suspended based upon the court's determination that the defendant poses a low risk of substance abuse.

It is further ordered that the defendant shall pay to the United States a special assessment of \$500, which shall be due immediately and shall bear interest at the lawfully prescribed rate. Although provisions of the Victim and Witness Protection Act apply, restitution is not appropriate under the Act.


It is further ordered that the defendant shall pay to the United States a fine of \$25,000. The fine is due immediately. If the defendant is unable to pay the fine immediately, the fine may be paid through the Inmate Financial Responsibility Program. The court, having considered the defendant's financial resources and ability to pay, orders that any balance still owed at the time of release shall be paid in installments of \$250 per month to begin 60 days after defendant's release from prison. At the time of release, the probation officer shall take into consideration the defendant's ability to

sentence is the appropriate sentence for the defendant. See Keene, 470 F.3d at 1348-50; 18 U.S.C. § 3553(a).

pay the balance and shall notify the court of any needed modification of the payment schedule.

Finally, the court has advised the defendant of his appellate rights.

SO ORDERED. This 7 day of May 2007.


JAMES C. DEVER III
United States District Judge