20-3520-cr(L), 20-3789-cr(CON)

United States Court of Appeals

for the

Second Circuit

UNITED STATES OF AMERICA,

Appellee,

– v. –

ALLISON MACK, KATHY RUSSELL, LAUREN SALZMAN, NANCY SALZMAN, AKA Perfect,

Defendants,

KEITH RANIERE, AKA Vanguard, CLARE BRONFMAN,

Defendants-Appellants.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK

SUPPLEMENTAL PRINCIPAL BRIEF FOR DEFENDANT-APPELLANT CLARE BRONFMAN

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PRELIMINARY STATEMENT

Appellant Clare Bronfman submits this supplemental principal brief in support of her request that the Court vacate her 81-month sentence, which is three times the upper end of the Guidelines range. Ms. Bronfman demonstrated in her principal brief that the district court's (Garaufis, J.) extraordinary upward variance was procedurally unreasonable because (1) it was based on a clearly erroneous finding that Ms. Bronfman was willfully blind to DOS and the related misconduct of which codefendant Keith Raniere was convicted; (2) Ms. Bronfman had no notice of or fair opportunity to rebut the district court's erroneous finding; and (3) the district court's remaining elliptical grounds for the sentence were internally inconsistent and insufficient to justify a variance of 200% above the Guidelines range. *See* Bronfman Principal Brief (Dkt. No. 69). Subsequent developments since Ms. Bronfman filed her brief have brought to light additional reversible error that further demonstrates the procedural unreasonableness of her nearly seven-year prison sentence.

Specifically, the sentences imposed on Ms. Bronfman's codefendants exacerbate the unwarranted disparity between her sentence and similarly situated defendants'. The district court made clear its belief that Ms. Mack and Ms. Salzman were central figures in DOS who spearheaded and carried out some of the most sensationalized conduct alleged against the organization—conduct that

resulted in both of them admitting to multiple acts of racketeering and to carrying on the affairs of a RICO enterprise. Yet despite their conduct and crimes of conviction, Ms. Mack received a sentence of just 36 months' imprisonment, and Ms. Salzman received a sentence of no prison time. As to Ms. Mack, whose Guidelines range was 168 to 210 months, this sentence represents a reduction of 82% from the upper end of the range. Ms. Salzman's sentence is, of course, a 100% reduction from her Guidelines range of 87 to 108 months.

Clare Bronfman stands in stark contrast to these codefendants. As the government concedes, Ms. Bronfman played *no* role in DOS. She knew nothing about it—DOS members deliberately concealed the organization from her, including by lying to the professionals she hired to investigate the allegations when they became public. Ms. Bronfman pleaded guilty to comparatively minor immigration and identity theft offenses, yet the district court sentenced her to 81 months, more than twice as long as Ms. Mack and nearly seven years longer than Ms. Salzman.

Ms. Bronfman's conduct is far closer to codefendant Kathy Russell's than it is to anything Ms. Mack or Ms. Salzman did. Ms. Russell was a bookkeeper within NXIVM who, like Ms. Bronfman, did not participate in or plead guilty to racketeering. Like Ms. Bronfman, Ms. Russell was a nonviolent, noncooperating, first-time offender. And like Ms. Bronfman, there was no suggestion that Ms.

Russell participated in or even knew about any of the DOS-related conduct at the heart of this case. Yet *unlike* Ms. Bronfman, Ms. Russell received a sentence of no prison time, while Ms. Bronfman sits behind bars for years to come.

The disparity between these sentences, and between Ms. Bronfman's sentence and similar offenders around the country, cannot be justified. Certainly the explanation the district court gave is insufficient. Far from justifying the disparities, the district court's comments make clear that the real reason for tripling Ms. Bronfman's Guidelines range is because she has not renounced Keith Raniere. But whatever justification may exist for the district court's contempt for Mr. Raniere, the misdirected vengeance underlying Ms. Bronfman's sentence cannot bear the weight needed to justify an extraordinary upward variance and a shocking disparity between her sentence and her codefendants' and similarly situated defendants'.

The disparity in sentences violates Section 3553(a)(6) and further demonstrates the procedural unreasonableness of Ms. Bronfman's draconian 81-month sentence. The defective process the district court employed, its unfounded and incoherent findings, and its unjustified harsh treatment of Ms. Bronfman cannot pass muster under prevailing law. District courts should not be permitted to single out defendants for special punishment based on a record like the one in Ms. Bronfman's case. In order to do justice to Clare Bronfman and maintain the

integrity of the criminal justice system, this Court should vacate and remand for resentencing.

STATEMENT OF THE CASE

A. Clare Bronfman's Offense Conduct And Sentencing

Ms. Bronfman respectfully directs the Court to her principal brief, which describes the conduct underlying the immigration and identify theft offenses to which she pleaded guilty, Bronfman Principal Brief 6–7; her ignorance of anything related to DOS, *id.* at 8–13; her stymied efforts during the sentencing process to demonstrate her mental state and other essential facts, *id.* at 13–15; and the district court's unfounded findings and imposition of a prison sentence three times her Guidelines range, a fine of $500,000 (the statutory maximum), forfeiture of $6 million, and restitution of $96,605.25, *id.* at 15–20.

B. Allison Mack's And Lauren Salzman's Offense Conduct And Sentencings

Ms. Mack and Ms. Salzman were central figures in DOS. They served as first-line "masters" who reported directly to Mr. Raniere and recruited dozens of women into the organization. They were core participants in the sensationalized conduct at issue in DOS and the other crimes alleged by the government. Next to Mr. Raniere, Ms. Mack and Ms. Salzman bear vastly greater culpability than any

other defendant for the conduct at issue in this case. (*See* SBA6–11, 18–19, 30, 36–37, 41–44, 73–74.)[1]

Shortly before Mr. Raniere's trial began, both Ms. Mack and Ms. Salzman pleaded guilty to racketeering offenses and began cooperating against Mr. Raniere. For example, Ms. Mack produced a recording of her and Mr. Raniere designing the branding ceremony, and Ms. Salzman testified at length at Mr. Raniere's trial. (SBA76–77, 116–117.) The district court's Sentencing Guidelines analysis put Ms. Mack at offense level 35 and criminal history category I, which yielded a Guidelines range of 168 to 210 months, and Ms. Salzman at offense level 29 and criminal history category I, which yielded a Guidelines range of 87 to 108 months. (SBA52–53, 88–89.)

The court, however, imposed sentences substantially below the Guidelines. It sentenced Ms. Mack principally to 36 months' imprisonment, approximately 80% lower than her Guidelines range. (SBA79.) It sentenced Ms. Salzman to no prison time at all. (SBA119.) In doing so, the district court identified essentially the same three considerations: (1) both Ms. Mack and Ms. Salzman cooperated; (2) both were under the "coercive and manipulative" influence of Mr. Raniere; and (3) unlike "other individuals who have remained deferential to Mr. Raniere," both

[1] Citations to "SBA" refer to the Supplemental Bronfman Appendix submitted with this brief. Citations to "SPA" refer to the Special Appendix submitted with Ms. Bronfman's principal brief (Dkt. No. 69).

had turned the page on the part of their lives during which they were devoted to him. (SBA75–77, 117–18.)

C. Kathy Russell's Offense Conduct And Sentencing

The last codefendant to be sentenced was Kathy Russell, who was a bookkeeper within NXIVM. She pleaded guilty to one count of visa fraud, having assisted several noncitizens to cross the border or otherwise engage in immigration offenses. (SBA126, 143–44.) Ms. Russell also participated in a scheme to install software on a NXIVM detractor's laptop in order to monitor his computer activity. (SBA143.) The district court's Guidelines analysis put Ms. Russell at offense level 10 and criminal history category I, which yielded a Guidelines range of six to 12 months. (SBA128.)

The court sentenced her to no prison time, relying on two of the same factors that it did in sentencing Ms. Mack and Ms. Salzman: it noted that Ms. Russell was a victim of Mr. Raniere and that she had renounced him. (SBA145, 159.) (Ms. Russell did not cooperate with the government, and that consideration did not come up at her sentencing.)[2]

[2] The district court also recently sentenced codefendant Nancy Salzman to 42 months' imprisonment, which was within the applicable Guidelines range. Like those imposed on Allison Mack, Lauren Salzman, and Kathy Russell, this sentence further demonstrates that the extraordinary upward variance in sentencing Ms. Bronfman creates an unwarranted disparity in violation of Section 3553(a).

STANDARD OF REVIEW

This Court reviews sentences for procedural reasonableness under a "deferential abuse-of-discretion standard." *United States v. Singh*, 877 F.3d 107, 115 (2d Cir. 2017).[3] Failure to consider a statutory factor under Section 3553(a) is a procedural error, as is failure to "provide a basis for understanding why" the court imposed a particularly long sentence relative to the Guidelines. *United States v. Pugh*, 945 F.3d 9, 27 (2d Cir. 2019); *United States v. Dorvee*, 616 F.3d 174, 179 (2d Cir. 2010). The statutory mandate to "avoid unwarranted sentence disparities," 18 U.S.C. § 3553(a)(6), prohibits a district court from "selectively rely[ing]" on mitigating or aggravating factors in sentencing one defendant while ignoring them in sentencing a codefendant. *United States v. Mumuni*, 946 F.3d 97, 113–14 (2d Cir. 2019). A disparity in sentences between codefendants requires remand where there is no adequate explanation for the disparity. *Id.*; *United States v. Esso*, 486 F. App'x 200, 203 (2d Cir. 2012) (summary order) (vacating and remanding for reconsideration of sentencing disparities between codefendants); *United States v. Nunez-Gonzalez*, 295 F. App'x 473, 474 (2d Cir. 2008) (summary order) (remanding where the Court was "uncertain as to whether the District Court fully considered the sizeable disparity between the sentences of" appellant and

[3] Unless otherwise indicated, this brief omits from quotations and citations all internal quotation marks, alterations, footnotes, and citations.

codefendant "who appear[ed] to have played a more significant role in the conspiracy but nevertheless received a substantially shorter sentence").

ARGUMENT

THE SENTENCE IMPOSED ON CLARE BRONFMAN CREATES AN UNWARRANTED SENTENCING DISPARITY.

The sentences imposed on Ms. Bronfman's codefendants, and the district court's purported justifications for those sentences, further demonstrate that Ms. Bronfman's sentence creates an unwarranted sentencing disparity in violation of 18 U.S.C. § 3553(a)(6) and, as a result, that her sentence is procedurally unreasonable. Ms. Bronfman previously demonstrated the disparity between her 81-month sentence and sentences imposed on other first-time, noncooperating offenders convicted of the same crimes as her, for which the mean was 33 months and there were no upward variances. Bronfman Principal Brief 26–28. The sentences imposed on Ms. Bronfman's codefendants undermine any argument that her conduct or the unique circumstances of this case justify that staggering disparity.

There is no principled basis for the district court's decision to imprison Clare Bronfman for nearly seven years, Allison Mack for three years, and Lauren Salzman and Kathy Russell for no time at all. Ms. Mack and Ms. Salzman were far more involved in the core conduct at issue in this case than Ms. Bronfman was. They were high-level members of DOS who recruited new members, devised and

carried out the branding ceremony, and were active, committed participants in the conduct underlying the inflammatory allegations in this case. The district court characterized their conduct in uncommonly reproachful terms. It rebuked Ms. Mack for "[her] cruelty, [her] lies, [her] manipulation, [her] apparent sadistic pleasure in watching [other DOS members] suffer, and [her] creative enthusiasm when it came to developing new ways to debase them." (SBA73.) It likewise found that Ms. Salzman engaged in "some of the rawest and most consequential kinds of manipulation of human conduct and the taking advantage of human frailty" and "helped Keith Raniere implement some of the most twisted, manipulative, and harmful schemes." (SBA115–17.)

Ms. Bronfman's offenses involved (1) helping someone who had lied on a visa application remain in Albany to be part of the NXIVM community and (2) paying balances of a deceased person's credit card where the charges were incurred by the beneficiary of that person's estate. Ms. Bronfman didn't take "sadistic pleasure in watching" people "suffer." She didn't show "creative enthusiasm" for "debas[ing]" people. She wasn't part of any "twisted, manipulative, and harmful schemes."

There can be no legitimate dispute that Ms. Bronfman's conduct warrants a far shorter sentence than Ms. Mack's and Ms. Salzman's. Although it is difficult to quantify the difference in culpability between, on the one hand, Ms. Bronfman's

immigration and identity theft offenses and, on the other hand, Ms. Mack's and Ms. Salzman's racketeering crimes, the Sentencing Guidelines provide one objective benchmark. The low end of Ms. Mack's sentencing range (168 to 210 months) was more than six times longer than the high end of Ms. Bronfman's (21 to 27 months). Ms. Salzman's sentencing range (87 to 108 months) was approximately four times longer than Ms. Bronfman's. Yet Ms. Mack received a prison sentence less than half as long as Ms. Bronfman, and Ms. Salzman received a sentence of no prison time at all. The differences among Ms. Bronfman's, Ms. Mack's, and Ms. Salzman's conduct cannot explain this disparity. That alone requires vacatur. *See, e.g.*, *Esso*, 486 F. App'x at 203 (vacating where district court "fail[ed] to explain why Esso received a longer sentence than Persaud despite Esso's lesser culpability, and the fact that the two were similarly situated in numerous respects"); *United States v. Reyes-Santiago*, 804 F.3d 453, 472–74 (1st Cir. 2015) (vacating where "no rationale … justifie[d] the uniquely harsh" sentence imposed on appellant as compared to codefendants who were leaders and managers in conspiracy, indicating that sentence was "indirectly traceable to events the court said it was not taking into account"); *United States v. Mattox*, 402 F. App'x 507, 510–11 (11th Cir. 2010) (summary order) (vacating where trial court failed to explain why it varied upwards in sentencing one defendant while

varying downwards in sentencing codefendant whose "crime was under most standards worse").

The considerations the district court identified at the sentencings do not explain the disparity either. As demonstrated in Ms. Bronfman's principal brief, the justifications the court offered at her sentencing cannot withstand scrutiny. Bronfman Principal Brief 29–39, 45–50 (willful-blindness finding clearly erroneous and irreconcilable with Guidelines calculation); *id.* at 50–58 (other proffered bases unavailing). At Ms. Mack's and Ms. Salzman's sentencing proceedings, the district court focused on (1) their cooperation; (2) the abuse they alleged Keith Raniere inflicted on them; and (3) their renunciation of Mr. Raniere. (SBA75–77, 117–18.) The second and third factors were at play during Ms. Russell's sentencing, as well. (SBA145, 159.) But none of these factors can explain why Clare Bronfman deserved a sentence three times the Guidelines and Ms. Mack, Ms. Salzman, and Ms. Russell deserved special leniency.

Cooperation cannot explain the disparity. Ms. Russell did not cooperate at all, yet nevertheless received a non-Guidelines, nonincarceratory sentence. That alone suggests that cooperation is not the driving force behind the extraordinarily lenient sentences imposed on Ms. Bronfman's codefendants. And while she does not dispute that Ms. Salzman and Ms. Mack provided substantial assistance to the government, Ms. Bronfman had nothing to contribute regarding DOS or any other

alleged misconduct except for her own offenses, for which she accepted complete responsibility. (*See* SPA14–15.) Tripling her Guidelines range for failing to cooperate against Mr. Raniere, particularly where she had no personal knowledge of the alleged conduct at issue, "is impossible to reconcile with [this Court's] precedents." *United States v. Rivera*, 201 F.3d 99, 102 (2d Cir. 1999); *United States v. Stratton*, 820 F.2d 562, 564–65 (2d Cir. 1987) (vacating and remanding for resentencing before a different judge where sentencing court "increas[ed] the severity of a sentence for a defendant's failure to cooperate").

Nor is it clear why the second consideration is a mitigating factor for Ms. Mack, Ms. Salzman, and Ms. Russell, but not for Ms. Bronfman. The district court's belief that Mr. Raniere coerces, manipulates, and victimizes women who are close to him logically would lead to the conclusion that Ms. Bronfman also deserves mercy, not a sentence three times the Guidelines range. The district court's reliance on this factor to mitigate Ms. Mack's, Ms. Salzman's, and Ms. Russell's sentences, but not Ms. Bronfman's, is improper. District courts may not "selectively rely on a [sentencing] factor when it serves a mitigating function in one case" and then ignore it when sentencing codefendants. *Mumuni*, 946 F.3d at 113–14.

That leaves the fact that Ms. Mack, Ms. Salzman, and Ms. Russell have forsaken Mr. Raniere while Ms. Bronfman has "remained deferential … even as

the artifice of his virtues crumbled." (SBA75–76; *see also* SPA124 ("[Ms. Bronfman] has not clearly apologized for [declining to renounce Mr. Raniere], admitted her actions were harmful, or conceded that her loyalty was misplaced").) This reasoning cannot justify tripling Ms. Bronfman's Guidelines range, because, as demonstrated in her principal brief, the district court rejected this reasoning when it applied the reduction for acceptance of responsibility under Section 3E1.1. Bronfman Principal Brief 48–50. The district court's finding that Ms. Bronfman accepted responsibility for purposes of the Guidelines analysis, but not for purposes of Section 3553(a), is improper under this Court's precedent. *Id.* (citing *Singh*, 877 F.3d at 119). At minimum, this incoherent reasoning cannot justify the staggering disparity between Ms. Bronfman's sentence and those imposed on her codefendants and on similarly situated defendants around the country.

In sentencing Ms. Bronfman to nearly seven years in prison and millions of dollars in fines, forfeiture, and restitution, the district court not only made clearly erroneous findings, *id.* at 29–40; deprived Ms. Bronfman a fair opportunity to rebut those findings, *id.* at 40–45; and offered other unsupported justifications, *id.* at 45–58; but it also created an unwarranted disparity in violation of 18 U.S.C. § 3553(a)(6). No special circumstances justified sentencing Ms. Bronfman to more than twice as much prison time as similarly situated defendants across the country, *id.* at 26–28, much less the active, first-line DOS "masters" who were at the center

of the criminal conduct alleged in this case. Any one of the errors identified here and in Ms. Bronfman's principal brief requires vacatur. Taken together, they leave no doubt that Ms. Bronfman is entitled to resentencing free of procedural error.

CONCLUSION

The Court should vacate Ms. Bronfman's sentence and remand for resentencing.

Dated: New York, New York
October 20, 2021

Respectfully submitted,

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UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

No. 20-3520
Caption: *United States v. Bronfman*

CERTIFICATE OF COMPLIANCE WITH THE TYPE-VOLUME LIMITATION, TYPEFACE REQUIREMENTS, AND TYPE STYLE REQUIREMENTS

I certify that this brief complies with the type-volume limitation of Rule 32(a) of the Federal Rules of Appellate Procedure and this Court's August 25, 2021 Order granting Ms. Bronfman leave to file a supplemental principal brief of not more than 3,000 words (Dkt. No. 126). This brief is written in Times New Roman, a proportionally spaced font with serifs, has a typeface of 14 points, and contains 2,997 words (as counted by Microsoft Word), excluding the parts of the brief exempted by Rule 32(f) of the Federal Rules of Appellate Procedure.

/s/ Daniel R. Koffmann
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