

11th Circ. OKs 3-Year Term For COVID Loan Pokemon Fraud

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Summary

The Eleventh Circuit affirmed Wednesday a Georgia man's three-year prison sentence for defrauding the federal COVID-19 relief program out of \$85,000 to buy a single **Pokemon** card, rejecting his argument that the trial court's tough sentence was unfair and merely because the court disliked him.

Body

The Eleventh Circuit affirmed Wednesday a Georgia man's three-year prison sentence for defrauding the federal COVID-19 relief program out of \$85,000 to buy a single **Pokemon** card, rejecting his argument that the trial court's tough sentence was unfair and merely because the court disliked him.

In an 11-page published opinion written by U.S. Circuit Judge Ed Carnes, a unanimous three-judge panel upheld Vinath Oudomsine's three-year prison sentence and concluded that the district court's upward variance from the recommended eight-to-14-month sentencing guidelines is still "far below" the 20-year statutory maximum that Oudomsine could receive for his crime.

The panel also said there is no evidence in the record to support Oudomsine's argument that his tough sentence merely reflected the judge's dislike of him, adding "whatever that means in this context."

"[Oudomsine] claims the real reason the court varied upward was that it did not like him, and the reason it didn't was that of the \$85,000 he obtained by **fraud** he spent \$57,789 to buy a single **Pokemon** card," the opinion says. "We are not persuaded."

Judge Carnes pointed out, however, that "it would not be surprising, or disqualifying, if a judge did not 'like' a person who defrauded a federal program of funds intended to promote the public good and help small businesses, particularly when the stolen funds were used for the purpose of purchasing a \$57,789 **Pokemon** card."

Regardless of the trial judge's personal feelings about the defendant, Judge Carnes wrote, Oudomsine's motive and how he used his ill-gotten gains are relevant to the sentencing factors.

"Their relevance does not depend on whether the judge likes the defendant," the opinion adds.

Prosecutors hit the 31-year-old Oudomsine, who resides in Dublin, Georgia, with a criminal information sheet in October 2021, charging him with one count of wire **fraud** for submitting a false economic injury disaster loan application in July 2020 to obtain an \$85,000 Small Business Administration loan under the Coronavirus Aid Relief and Economic Security Act.

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Oudomsine's application falsely claimed that he owned a small business with 10 employees that he founded in 2018 with gross revenues of \$285,000, and as a result, he received \$85,000 in pandemic relief in August 2020, which he later used in January 2021 to buy a \$57,789 **Pokemon** card, according to the information sheet.

Days after being charged, Oudomsine pled guilty to providing false information to obtain the loan, and in March, U.S. District Judge Dudley H. Bowen sentenced Oudomsine to three years in prison, plus three years of supervised release, and ordered him to pay \$85,000 in restitution plus a \$10,000 fine. Court documents don't specify what type of **Pokemon** card Oudomsine purchased, but prosecutors said in a statement last year that he agreed to forfeit the card, and identified it as "Charizard," as part of the plea deal.

Oudomsine quickly appealed the sentencing, challenging its procedural and substantive reasonableness. Oudomsine argued on appeal that the lower court didn't explain why it varied upward from the recommended eight-to-14-month prison term range, and the sentence was unnecessarily tough and aimed to deter fraudulent conduct that is no longer possible since the coronavirus federal relief program has ended.

But on Wednesday, the appellate court rejected Oudomsine's appeal and noted that the three-year prison sentence is well below the 20-year statutory maximum penalty, and the district judge "specifically" explained that he was varying upward from the recommended range after considering the parties' arguments, the sentencing guidelines, the advisory guidelines range, the presentence investigation report and the various sentencing factors.

The district judge explained in his opinion that he was issuing a tougher sentence to deter other similar crimes, and he emphasized that Oudomsine's **fraud** wasn't ordinary, because Oudomsine used "his education, ability and background to steal money from a national benevolence," taking \$85,000 from a federal relief program that aimed to boost the economy during a global pandemic, according to the appellate court's opinion.

The panel noted that the district judge also explained that Oudomsine's conduct had shown "blatant disregard for the people who needed these funds and for the people who paid for this program."

"The court didn't rely on any clearly erroneous facts in making that decision and adequately explained why it didn't consider this to be a [run-of-the-mill] case, particularly because Oudomsine used his education and ability to exploit a government relief program during a time of economic upheaval," the opinion says.

The panel also rejected Oudomsine's claim that deterrence is unnecessary because the federal pandemic relief has ended, and there is no longer an opportunity for others to commit the same type of **fraud**.

"While the federal program Oudomsine bilked no longer exists, deterring **fraud** and other crimes against future multi-billion dollar government programs remains an important sentencing goal," the panel said. "As we had occasion to comment recently, 'Like bears to honey, white collar criminals are drawn to billion-dollar government programs.'"

Oudomsine's counsel, Devin A. Rafus of Arora Law Firm, said Thursday that he's disappointed in the panel's decision, and he noted that the sentencing guidelines are intended to maintain consistency across every district and to prevent unreasonable sentences.

"Singling out Vin to make him an example for deterrence purposes, while he has one of the lowest loss amounts I have seen for [COVID-19 relief loan **fraud**] cases, was unfair," Rafus said. "Ultimately, the judge sentencing Vin to three times the guidelines range was unduly harsh."

Representatives for the government didn't immediately respond to a request for comment Thursday.

U.S. Circuit Judges Barbara Lagoa, Andrew L. Brasher and Ed Carnes sat on the panel.

The government is represented by Justin Davids and James C. Stuchell of the U.S. Attorney's Office for the Southern District of Georgia.

Oudomsine is represented by Devin A. Rafus of Arora Law Firm.

The case is U.S. v. Vinath Oudomsine, case number 22-10924, in the U.S. Court of Appeals for the Eleventh Circuit.

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--Editing by Jay Jackson Jr.

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