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Sentence

1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

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3 UNITED STATES OF AMERICA,

4 v.

14 CR 243 (JSR)

5 ROBERT FAIELLA,

6 Defendant.

7 -----x

8 New York, N.Y.
9 January 20, 2015
4:32 p.m.

10 Before:

11 HON. JED S. RAKOFF

12 District Judge

13
14 APPEARANCES

15 PREET BHARARA

16 United States Attorney for the
Southern District of New York

17 ALEXANDER WILSON

Assistant United States Attorney

18 SIDLEY AUSTIN LLP

Attorneys for Defendant

19 TIMOTHY TREANOR

20 TODD BEATON

DAVID DENTON

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1 (In open court; case called)

2 MR. WILSON: Good afternoon, your Honor.

3 Alexander Wilson for the government. With me at
4 counsel table is Special Agent Gary Alford of the IRS.

5 THE COURT: Good afternoon.

6 MR. TREANOR: Good afternoon, your Honor.

7 Tim Treanor, Todd Beaton and David Denton for
8 Mr. Faiella, who is sitting next to me.

9 THE COURT: Good afternoon.

10 We're here for sentence. The probation office has
11 calculated the guideline range as 57 to 71 months but because
12 of the five-year limitation on the underlying offenses the
13 guideline range is 57 to 60 months.

14 In their excellent submissions or submission -- I
15 don't think I've received anything from the government, but in
16 the submission I received from defense counsel there was no
17 objection to that.

18 That seems right to the Court as well. Does anyone
19 disagree with that?

20 MR. WILSON: No, your Honor.

21 MR. TREANOR: No, your Honor.

22 THE COURT: Very good. So that's the guideline range.

23 Now, this Court, of course, must sentence the
24 defendant based on all the factors under Section 3553(a). And
25 I want to hear from counsel but let me just say that there are

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1 a couple of differences between Mr. Faiella and Mr. Shrem, not
2 all of which cut in the same direction, but the one that is
3 most glaring is that this defendant has a prior felony
4 conviction. So it seems to me that he will have difficulty
5 persuading me to sentence him to the same or less than
6 Mr. Shrem. There are other factors that are to be considered.

7 On the other hand, Mr. Treanor, maybe I misread your
8 sentencing submission but you don't seem to have indicated what
9 sentence you're proposing -- not that you're required to. You
10 say you want a sentence no greater than the bottom of this
11 stipulated guideline range which is 57 months. And even if the
12 government were to argue for the top of the guideline range,
13 namely 60 months, it would not be a very prudent use of this
14 Court's time to quibble as between 57 and 60. The relevant
15 question is whether it should be any less than 57.

16 So let me hear first from defense counsel, then from
17 government counsel, and then from the defendant if he wishes to
18 be heard.

19 MR. TREANOR: Thank you, your Honor.

20 Your Honor, with regards to where we would like
21 Mr. Faiella to be sentenced we're mindful of the fact that we
22 stipulated in the plea agreement to an applicable sentencing
23 range. We wouldn't argue for a sentence below that.

24 THE COURT: Let me look at the plea agreement. I'm
25 sorry. I didn't realize this was -- normally the government

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1 doesn't include -- I shouldn't say normally, there are
2 variations. Does someone have a copy of the plea agreement?

3 MR. WILSON: Yes, your Honor.

4 THE COURT: Hand that up please.

5 MR. TREANOR: Your Honor, I apologize. This is what's
6 called an option B agreement I think by the office, which
7 permits the defendant to argue under 3553(a) for a sentence
8 below the range.

9 THE COURT: That's the point.

10 MR. TREANOR: Right.

11 THE COURT: And the U.S. Attorney's Office, to its
12 great credit, does not take the position anymore that it used
13 to take that you can't argue for a nonguidelines sentence. It
14 just says that if you are sentenced to the guideline range or
15 lower you can't appeal or things like that. That sometimes has
16 that waiver involved. There are variations on the theme. But
17 not the one that you're indicating. So you're free to --

18 MR. TREANOR: Correct, argue.

19 THE COURT: -- argue for a nonguideline sentence.
20 Does the government agree?

21 MR. WILSON: Oh, yes, sir.

22 THE COURT: Let me hand this back to counsel.

23 MR. TREANOR: Your Honor, of course, we would ask that
24 the Court sentence Mr. Faiella with leniency and to a sentence
25 that is as low as possible. Now we recognize the fact that

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1 that doesn't necessarily mean that no incarceration is
2 appropriate. We --

3 THE COURT: You're welcome, of course, to argue about
4 anything you want, and I will be more than delighted to hear
5 you. But what I was trying to indicate in my earlier comments,
6 just to move this along, is that you will have a very hard time
7 convincing me that the sentence should be any less than
8 Mr. Shrem's, given your client's prior felony conviction.
9 Whether it should be lots higher, a little higher, whatever,
10 that's a different story. Happy to hear any argument in that
11 area. But -- and you're free to argue, of course, for an even
12 lower than Mr. Shrem. And I've got all the time in the world
13 and I'd be happy to hear you, but it may not be the most
14 prudent use of your time.

15 MR. TREANOR: Understood, your Honor.

16 When comparing this case to Mr. Shrem's case there are
17 obviously some differences. There are differences in who these
18 individuals are and there are some somewhat subtle differences
19 in their conduct. But I think our -- we would like to
20 analogize our case to Mr. Shrem's case and argue that a
21 sentence that's similar to the one imposed on Mr. Shrem is
22 appropriate. We think that that -- the reason for that, the
23 reason that that's a compelling argument is that the nature of
24 the offense for these two individuals is quite similar. You
25 know, when this case was charged there was a lot of attention

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1 paid to the fact that this was a bitcoin case that was
2 associated with Silk Road, Mr. Shrem was arrested with a large
3 sum of money in his bag in an airport, and there was a lot
4 about this case that made it look very cutting edge, like a
5 big-time case, a real interesting case. I think the truth of
6 the matter is quite different. Especially for Mr. Faiella,
7 more so than even Mr. Shrem.

8 This really is a very, very simple case. It's a
9 simple case of -- it's about conduct committed by Mr. Faiella
10 laying on his back in his bed in Florida where he has some --
11 suffering some medical issues and was trying to find ways to
12 make a living, to be able to provide support for his family.

13 Now obviously he chose -- he made some mistakes and he
14 chose to do things that are illegal. He's accepted that,
15 admitted that.

16 But really this is not a -- this case and the
17 sentencing range that is set forth in the plea agreement is
18 established in part based on an enhancement for being related
19 to narcotics trafficking. And we would argue that -- we do
20 argue that this case is really so different from your typical
21 narcotics case. In your typical narcotics case you have retail
22 sales on the street. There's the prospect of violence. The
23 sentencing -- granted the sentencing ranges for the guidelines
24 for narcotics trafficking have changed more recently, but they
25 were established in part with the violence that surrounds

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1 narcotics in mind. And the enhancement here we believe has
2 something to do with that.

3 This offense that Mr. Faiella committed was really one
4 that was in the online world, totally virtual. He was doing it
5 from his bedroom, engaged with people who were buying
6 narcotics, retail narcotics. They were unknown people who he
7 was not dealing with face-to-face. There really was no
8 prospect of violence. There wasn't a lot of money involved in
9 this case. I mean that's relative, but when you look at Silk
10 Road and how big an operation that was and you look at the
11 amounts that were involved with Mr. Faiella and Mr. Shrem, they
12 were relatively quite low. There was not a lot of profit made
13 in this case. And really what this is, it is a case of an
14 individual who had some tough breaks in life, some medical
15 issues, was rather desperate because he was unemployed, was
16 looking to support his family, and was poking around on the
17 internet and figured out that by advancing bitcoin to people he
18 could earn a little premium, a little cut. And the people who
19 are most interested in getting a small premium from a bitcoin
20 sale were individuals who were buying narcotics on Silk Road.
21 And certainly Mr. Faiella sought to solicit those individuals.
22 He advertised on Silk Road's website.

23 But it's really a very, very simple case. It's a very
24 simple crime. It's not as complicated as one might think and
25 as it seems to have been depicted at times in the media. It's

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1 a very, very simple case. And we think that that speaks to the
2 limited nature of the sort of culpability of criminality in
3 this case. We think it's a sort of lesser case within the
4 framework that it's been charged.

5 For that reason, we think that in some ways, because
6 Mr. Faiella was just an individual who was helping other
7 small-time retail individuals and not running a big business
8 like Mr. Shrem, we think that it's an even more compelling
9 argument on behalf of Mr. Faiella that this is -- this is not
10 the kind of conduct that warrants a sentence in the range of 57
11 to 60 months that the guidelines suggest is appropriate. So
12 that's one way that we think that the case is favorably
13 distinguished from that of Mr. Shrem's.

14 Other I think compelling factors that are similar to
15 Mr. Shrem is the acceptance of responsibility here.
16 Mr. Faiella -- and of course we filed a motion challenging the
17 legal sufficiency of one of the charges. We lost that motion.
18 And, of course, we don't think the arguments we raised were
19 crazy. They were worth making. But as soon as we lost that
20 motion, Mr. Faiella stepped up, accepted responsibility, pled
21 guilty, and is now here to be sentenced by your Honor.

22 There was some discussion, and the probation office
23 makes an issue in the report, of whether or not he sufficiently
24 accepted responsibility. We had a little bit of a difficult
25 exchange with the probation office. Tried to explain the fact

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1 that Mr. Faiella doesn't need to admit that he knew that the
2 licensing requirements precluded his conduct in order to be
3 guilty, that it's sufficient for him to have known that
4 engaging in the conduct that he engaged in, in a manner that
5 would facilitate the purchase of narcotics is a crime and he
6 accepts --

7 THE COURT: Actually, the old adage is ignorance of
8 the law is no excuse. He has to have mens rea. And he has
9 admitted to recognizing that his conduct was morally wrong.

10 But I think point that was being made by the probation
11 officer, which you might want to address, it's one thing to say
12 you don't know about things like the licensing requirements for
13 a money transmitting business. It's quite something else to
14 say that you don't know that by facilitating, purposely
15 facilitating the narcotics purchases of unlawful substances in
16 a way that's designed to conceal both your and their identities
17 and to prevent detection by law enforcement and to structure
18 the transactions to avoid attention, that you don't know that
19 you're involved in money laundering. What else would it be?

20 MR. TREANOR: Well, your Honor, I think my client
21 would readily admit that that is exactly what happened; is that
22 he engaged -- he was helping individuals to purchase bitcoin,
23 and he knew that they were using it to buy narcotics, and he
24 knew that was wrong.

25 THE COURT: So how do you account for the fact that

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1 the letters, the very fine letters that I received from his
2 wife and sister-in-law, mother-in-law, father, all or mostly
3 seem to suggest that he was not aware of the illegality of what
4 he was doing?

5 Again, he may not have been aware of the illegality of
6 the licensing side but on the money laundering side how could
7 he not be aware?

8 MR. TREANOR: Your Honor, the count that he pled
9 guilty to is operating an unlicensed money transmitter. And I
10 think that's the problem here. The problem is that, having
11 pled guilty to that, it sounds a lot like did he know that he
12 was -- that he was operating a business that needed to be
13 licensed. And the answer to that is -- is Mr. Faiella would
14 say that he didn't know; that he knew that there were licensing
15 issues around this business.

16 THE COURT: I understand the government gave him the
17 benefit of a plea bargain that included his only having to
18 plead to the licensing, which, again he doesn't have to know
19 the technicalities of that law if he knows he's doing wrong as
20 he admitted he did when he pled. But he was charged with money
21 laundering. That's not before me from a sentencing standpoint.
22 But what I can't understand is what is he saying to his wife,
23 to his father, that leads them to basically feel, in letters
24 designed to help him and that do help him, by the way, they are
25 poignant letters in many respects; saying well he didn't really

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1 understand the illegality. Yes, he may not have really
2 understood the illegality of the first count -- though I have
3 some questions in my mind about that, but we don't have to
4 dwell on that -- but he knew, as sure as anyone of his
5 intelligence and background knows, that facilitating and hiding
6 the purchases of illegal drugs is against the law as well as
7 being immoral. How could he not know?

8 MR. TREANOR: Well, your Honor, we don't take issue
9 with anything your Honor has said. We think that's evident.
10 Mr. Faiella would say that that's evident.

11 I think the issue is that he's got family members who
12 love him and who know that he was interested in bitcoin, that
13 he took the position that he didn't need to be licensed;
14 whether that was right or wrong, he rationalized that part of
15 this. I think that his family members are latching on to that
16 as a way to feel -- to defend him and to --

17 THE COURT: Well, I accept that.

18 So you were telling me -- I don't know if there was
19 anything further you wanted to say.

20 I agree with you that if -- I'll of course hear from
21 the government on this -- if we were purely dealing with his
22 situation versus Mr. Shrem's situation, while there are
23 significant differences, there's a rough similarity on the
24 facts of this case. But the big glaring difference is he's got
25 a prior felony conviction. And I don't know if you want to say

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1 anything about that, but that's the elephant in the room so to
2 speak.

3 MR. TREANOR: Your Honor, he does. He has a prior
4 felony conviction for a tax offense. And it is what it is.
5 Mr. Faiella pled guilty to the tax offense and it's part of his
6 history. It was not, in the scheme of things, a huge amount of
7 money involved. It was a mistake. And it's there. I think
8 Mr. Faiella's aware that that is something that should in life
9 have put him on notice that he should have operated on the
10 straight and narrow. But that comes back to the real -- the
11 real sort of story here, and that is when chosen -- when given
12 a choice between what to do when your family is in need,
13 Mr. Faiella chose what he thought -- whatever he thought at the
14 time. He thought it didn't require a license. He knew it was
15 a problem on the narcotics aspect of it. He knew that when he
16 chose to engage in that conduct to try to make money to support
17 his family. That's really the heart of it here, and that's
18 what led to that decision. It's admittedly, certainly by
19 Mr. Faiella, it was a poor decision. And he's ready to take
20 responsibility for that.

21 If I could have a minute, your Honor.

22 THE COURT: Yes.

23 (Pause)

24 MR. TREANOR: Your Honor, one additional point with
25 regards to the money laundering aspect of this. Half an

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1 education on a topic is a bad thing. For Mr. Faiella when you
2 look at simplistically at things like the money laundering
3 statute, that means to the average lay person that you're
4 helping to wash money, criminal proceeds typically. This was a
5 case in which --

6 THE COURT: I understand the distinction. And that's
7 a fair point. But this is why I keep drilling, perhaps too
8 much, on the prior conviction. Here's a man who had already
9 had serious trouble with the law in a, if you will, somewhat
10 technical area, tax evasion. So, he wants to play lawyer and
11 say: I can help these narcotics purchasers and my reading of
12 the licensing law or my reading of the money laundering law,
13 assuming he even bothered to read them, which I don't know,
14 makes me think maybe I can sneak in. And the fact that I have
15 already received a felony conviction for not following the law
16 and knowing when I committed tax evasion that it was morally
17 wrong, and even though I know for a certainty that this is
18 morally wrong and I'm contributing at a very minimum to one of
19 the greater scourges that our society faces, you know, I,
20 Mr. Faiella, I didn't go to law school but by gosh I am now
21 going to play lawyer and convince myself that this is somehow
22 okay.

23 Is that the argument?

24 MR. TREANOR: No, your Honor.

25 I think that hypothetical attributes too much thought

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1 to Mr. Faiella. Notwithstanding the fact that we have
2 Mr. Shrem, who is clearly a young, bright man with a lot of
3 interesting ideas. You have bitcoin which is a rather
4 sophisticated new, cutting-edge development. I hope
5 Mr. Faiella --

6 THE COURT: I agree with you that Mr. Shrem believes
7 that next only to the wheel bitcoin is the greatest invention
8 of our time, or of ever since the wheel was not of our time
9 but -- but I'm not sure how that cuts.

10 MR. TREANOR: Well, your Honor, the point that I'm
11 trying to make, and I hope Mr. Faiella will forgive me for
12 this, but this is not a sophisticated man, your Honor. He's
13 educated. He has a college education. But he was a plumber
14 before he ended up in the circumstances that he's in. He's not
15 somebody --

16 THE COURT: When my oldest daughter got married I was
17 so disappointed because, although she married a really terrific
18 guy, he was a lawyer. I was hoping for a plumber, myself.

19 MR. TREANOR: We all could use a good plumber, your
20 Honor.

21 I think that in going through -- trying to understand
22 the mental state of Mr. Faiella, I think to attribute too much
23 thought and complexity of thought would be wrong. I think
24 Mr. Faiella is a pretty straightforward, simple guy. I think
25 he was doing something that he was -- did a certain amount of

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1 surface research to assure himself that he had cover, because
2 he felt that there was something morally wrong with helping
3 people buy drugs. I think it's as simple as that.

4 THE COURT: I don't want my comments to be taken out
5 of context. I was impressed by the sincerity of Mr. Faiella's
6 plea, of his acceptance of responsibility. I think there is no
7 doubt that he accepted responsibility in a way that not all
8 defendants genuinely do. So I do take that into account.

9 Let me hear from the government. Thank you.

10 MR. WILSON: Thank you, your Honor.

11 Taking, as your Honor has suggested, I think, the
12 baseline here of Mr. Shrem's sentence, since that does seem to
13 be clearly the appropriate baseline to work from, the
14 government would offer that Mr. Faiella's culpability and the
15 necessary sentence here is significantly greater than
16 Mr. Shrem's for a variety of reasons, the first of which your
17 Honor has clearly already identified, which is here we have a
18 prior felony offense which seems to have had no deterrent
19 effect in that case. Obviously, the sentence was probation and
20 a year's home confinement.

21 I don't want to dwell on it. Your Honor has
22 identified all the issues and I don't -- unless you wish me to,
23 I don't think I need to address it further.

24 THE COURT: I'll forego that pleasure.

25 MR. WILSON: There are a number of other issues here

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1 though and I think keying off that one to look at very clearly
2 is the need for specific deterrence in this case. Obviously I
3 have not been counsel on this throughout and I've only read the
4 sentencing transcript from Mr. Shrem, but my understanding and
5 my sense of your Honor's views is that specific deterrence of
6 Mr. Shrem was not a particularly key issue there, I don't
7 think. The government thought it was a key issue, and it seems
8 to have largely been presumed that that wasn't what we were
9 worried about.

10 THE COURT: I think that's a fair point. And I'm
11 going to give, of course, defense counsel a chance to respond
12 to any of these points before we hear from the defendant
13 himself. But usually in white collar cases -- this is really
14 in some respects a white collar case; that's one of the points
15 that defense counsel, in fact, was making, that this is not a
16 case involving violence -- you don't have to worry about
17 specific deterrence. These are folks who make serious mistakes
18 but very rarely are recidivists. You'll get, every once in a
19 while, the professional conman. But in a situation like
20 Mr. Shrem's or, one would have thought, Mr. Faiella's you don't
21 have to worry about specific deterrence. But in his case
22 clearly he didn't learn the lesson. And so the notion is that
23 a greater sentence may carry that message.

24 MR. WILSON: Yes, your Honor. And I think it goes
25 beyond just the prior felony and the willingness to reoffend

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1 and there are just a couple of other points I want to point you
2 to.

3 In this case Mr. Shrem obviously ultimately stopped
4 providing bitInstant services to the defendant. And at that
5 time he understood that the reasons were because they were
6 having issues with what he was providing.

7 That did not stop Mr. Faiella, which you might have
8 thought would have been a warning sign. Instead, he
9 reorganized himself and began essentially doing the exchanges
10 directly through personal accounts and the trust account on
11 Silk Road.

12 Then Silk Road was seized. And that, you would
13 certainly have thought, would have been enough of a warning for
14 anyone who was easy to deter, that this business was no longer
15 one he could safely engage in and that he needed to stop. But,
16 as your Honor knows, that's not what happened. The successor
17 Silk Road 2 spinoff website went up and the defendant continued
18 the same conduct on that website until his arrest.

19 That's a lot of opportunities for him to have stopped,
20 none of which he took and, I think, suggests a real
21 possibility, if not a likelihood, that absent a very
22 substantial sentence here, beyond what we were ever talking
23 about with Mr. Shrem, he may continue to commit crimes.

24 I think you also have to look, your Honor, in this
25 capacity, as you've said, white collar crimes, generally this

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1 isn't an issue, partly because they are often one-time mistakes
2 and you learn your lesson, but also because the risks of being
3 caught in future are so high in many white collar offenses.

4 One of the unique problems that we face in this type
5 of offense, with due respect to defense counsel, I think is not
6 so simple, is the potential for anonymity. I think this also
7 goes to what I think is not accurate about Mr. Faiella being a
8 simple man or an uncomplicated man. He took extensive steps
9 throughout this process ultimately once he lost BitInstant, not
10 effective steps, but nonetheless extensive ones, to maintain
11 his anonymity, to maintain deniability, to avoid law
12 enforcement detection. That is a real possibility in the world
13 in which we now live for this type of offense.

14 I agree, your Honor, there are some things with
15 Mr. Shrem that cut the other way, the obvious one being
16 subversion of a legitimate enterprise, a denial of the
17 regulations; but cutting the other way is that this is the type
18 of offense Mr. Faiella could, if he so chose, tried to commit
19 as soon as he's no longer in confinement. He can go online.
20 He can create, unfortunately, largely untraceable -- or at any
21 rate very difficult to trace mechanisms for doing this sort of
22 business. And the government will have to start from square
23 one. We did not find Mr. Faiella in a vacuum. It's only
24 because of the successful Silk Road investigation that you
25 would become aware of someone doing this. If he's not part of

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1 a website which the government is able to successfully
2 investigate and take down in the future, there is no
3 particularly clear reason to believe that the government would
4 catch him if he tried a similar scheme in the future, all of
5 which I think points very clearly to the need for a significant
6 or a significantly larger sentence than Mr. Shrem would receive
7 to deter him, frankly to incapacitate him as well, to make sure
8 that is not a possibility and that when he does comes out he
9 knows it's not worth it to try this sort of thing again.

10 Another issue which is perhaps in the same vein in
11 that it suggests --

12 THE COURT: I'm not sure -- it's been a while since
13 I've looked at Section 3553(a) -- I'm not sure that
14 incapacitation is something I can take account of, is it?

15 MR. WILSON: Well it's to protect society from future
16 crimes by the individual. I think it encompasses both specific
17 deterrence and --

18 THE COURT: I think I'd prefer specific deterrence. I
19 think I'm uncomfortable, as a legal matter, with
20 incapacitation.

21 MR. WILSON: Fair enough. In this case I think the
22 issue is clear in terms of specific deterrence.

23 This turns I think also to the point of -- I don't
24 know that it's acceptance of responsibility. I agree with your
25 Honor that plainly he has accepted responsibility for the

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1 illegal elements of this offense. But as it looks to the
2 possibility of recidivism here, the defendant's, I think,
3 continued assertion of things that are plainly not true about
4 his knowledge is troubling, as are a couple of other matters.

5 But starting with that. The defendant, as you noted,
6 his family has asserted it, I think his counsel has asserted
7 it, that he simply did not know that he needed to be licensed.
8 And that's not one of the elements of the offense, and he
9 doesn't have to admit. But there's a difference between not
10 admitting it and asserting as a mitigating factor that he
11 didn't understand.

12 Your Honor has the PSR. It's paragraph 57. But it
13 could not possibly be more clear that by July 2013 at the
14 latest, which is approximately six months before he ceases his
15 conduct when he's arrested, he knows that a money services
16 business, which bitcoin exchange business is, had to be
17 licensed. And he's explaining to the Dread Pirate Roberts why
18 he doesn't want to move out of his current system which offers
19 him more protection, precisely because since he has to be
20 licensed and he's not, if law enforcement finds him, they are
21 going to seize the funds and him, as I think the quote --

22 THE COURT: I'm glad you remind about paragraph 57. I
23 should note for the record that I'm adopting the factual
24 findings of the presentence report. This details, in quite
25 significant particularity, all the circumstantial evidence that

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1 shows that by July 30, 2013 he was specifically aware that he
2 was operating an unlicensed money transmitting business.

3 That's a good point. Thank you.

4 MR. WILSON: Certainly, your Honor.

5 So obviously I think your Honor takes the point the
6 fact that he did know and he's now claiming he didn't still,
7 despite having been willing to plead guilty to the particular
8 elements of the offense, I think is troubling to the
9 government.

10 I'll also note along the same vein there has been this
11 claim that's made by Mr. Faiella that he only made \$30,000. I
12 don't know if the particular amounts here are necessarily
13 significant. But it seems clear that that is not true.

14 As your Honor will know from the PSR details, the
15 commission that Mr. Faiella was charging was in the range of
16 nine to ten percent. Mr. Shrem, for the ones he was
17 processing, which is only a portion, of course, was taking two
18 percent. And we're talking at a minimum just during the
19 BitInstant period of the -- well, it's more than a million in
20 total transactions. The government and the defense have agreed
21 that it's approximately 950,000 in drug transactions that are
22 being funded. That's 70 to 80,000 at the bare minimum. I
23 don't know why Mr. Faiella is feeling the need to cut that in
24 half but it's very troubling to the government that he's trying
25 to minimize his culpability here. The profit numbers are not

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1 huge, obviously.

2 THE COURT: Yes. Well I want to hear from his counsel
3 on that point. I should make clear that the portion of his
4 acceptance which I do credit is I do think that he has
5 recognized and has made clear to the Court that he always
6 recognized that what he was doing was wrong. But I think you
7 have raised some troubling issues as to some more
8 particularized aspects of his state of mind.

9 MR. WILSON: I think, your Honor, to sum it up from
10 the government's perspective, and I know you're familiar with
11 the term, we would certainly view what he is doing here is
12 trying to minimize his conduct. He's admitted he knew what he
13 was doing was wrong, he's acknowledged his guilt. But he
14 continues to try to minimize it in hopes of getting a lighter
15 sentence; and not only should your Honor not give him a lighter
16 sentence based on those false statements, but the fact that
17 he's making them I think raises real concerns about the
18 likelihood of re-offense here.

19 I think turning probably away from the specific
20 deterrence issues, and I know your Honor has considered and
21 addressed it at some length with Mr. Shrem, the seriousness of
22 the offense and the need for general deterrence, so I won't
23 belabor those points.

24 THE COURT: Every case is, obviously, particularized
25 but in that respect, of course, the comments I made at

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1 Mr. Shrem's sentence apply equally to this situation.

2 MR. WILSON: All I would say there are a couple of
3 ways in which I think both of those cut in favor of the need
4 for a greater sentence for Mr. Faiella than for Mr. Shrem.

5 The first, with respect to the seriousness of the
6 offense, he's obviously here, the defendant, now he's the
7 principal. Mr. Shrem aided him. He facilitated his conduct
8 for part of the period. But the principal here, the one who
9 originated the scheme, the one who was on Silk Road, the one
10 who knew, not just as Mr. Shrem knew, certainly, that this was
11 facilitating illegal drug conduct, but literally was receiving
12 messages from undercovers stating, "I'm using this money to buy
13 cocaine," that's the defendant. We think that's a more serious
14 version of the offense, obviously.

15 In addition, he did it for longer. He began in
16 December 2011. Mr. Shrem ceases working with him in
17 October 2012. But Mr. Faiella continues to do it for more than
18 a year after that until his arrest in January 2014. Your Honor
19 can do the math but it's twice as long. And that is something
20 that goes to the seriousness of the offense and the defendant's
21 culpability and warrants a greater sentence to reflect it.

22 Finally, with respect to general deterrence, your
23 Honor, I think the one point that is worth making is precisely
24 for the same reason specific deterrence is more of a concern
25 here than it would often be in white collar crimes, because of

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1 the ability to do this anonymously, and to have some degree of
2 serious success in concealing your activity or your identity
3 from law enforcement, deterrence for others also requires that
4 when the government does locate one of the people doing this
5 and bring them to court and prove them guilty, that the
6 sentence be significant and not to call back to --

7 THE COURT: In effect what you're saying is when
8 someone comes up with a better mousetrap for committing a crime
9 you can't ignore the fact that they invented a new way to
10 accomplish that crime and the word's got to get out that that's
11 no good, it's just as bad as committing the crime the old way.
12 So I think there is something to that.

13 MR. WILSON: You said it better than I was going to,
14 your Honor.

15 THE COURT: I doubt that. But anyway let me hear from
16 defense counsel and then from the defendant.

17 MR. TREANOR: Your Honor, just to address a couple of
18 issues. First of all, with regards to the exchange with Dread
19 Pirate Roberts, the licensing issue. That e-mail exchange,
20 that exchange was basically a request from the Pirate, as he
21 was referred to, for Mr. Faiella to alter his business in a way
22 that was more of a specific exchange for Silk Road.
23 Mr. Faiella turned down that offer. And it is in that context
24 that he said money service businesses require a license. And
25 it was not his view that he was a money service business at

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1 that time. He looked at himself as an individual-to-individual
2 peer operation; not like Mr. Shrem, or not like what Dread
3 Pirate Roberts was asking him to do. And he declined that
4 offer. And that proves, in a sense, the issue of whether he
5 was parsing in his mind the licensing issue and feeling that
6 maybe he didn't need one.

7 But setting that aside, because that -- we think that
8 discussion is not particularly relevant because he knows that
9 he was helping people buy drugs and he knows that that was
10 wrong and that's the basis of why he's here. So, we don't find
11 that that e-mail supports the government's argument.

12 With regards to the amount made by Mr. Faiella, we
13 don't take issue with the 60, 70, 80, whatever thousand dollars
14 he made from this. Mr. Faiella was sharing some of his
15 proceeds with someone else who at times contributed to the
16 conduct. And in that sense --

17 THE COURT: Whoa, whoa, whoa. What does that mean?

18 MR. TREANOR: Your Honor that means that Mr. Faiella
19 is an individual who is incapacitated, is in bed for most of
20 the day, and at times, when the business got busy, had help.

21 THE COURT: So you mean there is another person
22 unknown, presently unknown who was involved in this crime?

23 MR. TREANOR: That may be correct, your Honor.

24 And also with regards to the split with Mr. Shrem --

25 THE COURT: I'm not sure which way that cuts. What

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1 was the background of this individual?

2 MR. TREANOR: Your Honor, I can't supply any
3 additional information.

4 THE COURT: Because you can't or because your client
5 has asked you not to?

6 MR. TREANOR: Because I can't.

7 Your Honor, the additional fact, Mr. Shrem's split in
8 this was not two percent; it was four percent. So that took up
9 a greater percentage of the proceeds of the transactions that
10 they did together.

11 With regards to specific deterrence --

12 THE COURT: Let me just -- I'm still troubled. So
13 Mr. Faiella says I should accept that he only made \$30,000.
14 That's something he raised. And the government says how can
15 that be?

16 MR. TREANOR: We don't take issue --

17 THE COURT: And you're saying they're right with
18 respect to what the total commission was.

19 MR. TREANOR: I'm just saying --

20 THE COURT: But he had to split it with another crook?

21 MR. TREANOR: Your Honor, I think, walking back the
22 math, I don't say that we agree with the government's
23 calculation of the amount of proceeds here. We don't take
24 issue with it. It sounds like it's in the right ballpark.

25 THE COURT: You've just told me, and the record I'm

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1 sure reflects, that he had to split his commission with someone
2 else.

3 MR. TREANOR: Correct. I'm starting with the total
4 proceeds, your Honor.

5 THE COURT: I understand that.

6 This is something he raised. In order for me to
7 evaluate that, I'd like to know a little bit more because it
8 may bear on his sentence, among other things.

9 MR. TREANOR: Your Honor, I don't have any additional
10 facts to provide on that. I can give you a breakdown of the
11 proceeds as we understand it. We don't take issue with what
12 the government has raised. We do take issue with the fact that
13 Mr. Shrem's split was not two percent; it was four percent.

14 THE COURT: Anything else from defense counsel?

15 MR. TREANOR: Your Honor, two additional things.

16 One is with regards to specific deterrence.

17 Mr. Faiella is not a one-man crime wave. This is a case in
18 which he was charged by the IRS with underreporting the
19 proceeds of his plumbing business. He pled guilty to that.
20 That was a very, very simple tax case.

21 And then this individual got back on the internet,
22 because he's incapacitated, was looking for ways in which he
23 could make some money on the internet and did what he did.

24 But he's not an individual who has a lot of
25 opportunity to commit criminal conduct and he's somewhat of a

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1 broken-down man at this point in his life. And we think that
2 that's a very important sort of mitigating factor on the
3 specific deterrent.

4 I also would be remiss if I didn't mention the fact
5 that notwithstanding Mr. Faiella's flaws he does have a family
6 who cares very much about him. His wife, Suzanne is here. And
7 they -- the family is going to -- when he is sentenced and
8 serves a sentence, a likely sentence of incarceration, he's
9 going to be away from them. They have difficult circumstances.
10 They have a very promising young son. And Mr. Faiella is an
11 important part of their lives. And we would just note that
12 they are going to lose him for that period of incarceration.

13 THE COURT: Thank you very much. Let me hear from
14 Mr. Faiella if he wishes to be heard.

15 THE DEFENDANT: Well, your Honor, at the time of the
16 offense I saw no other way. It still doesn't mitigate that I
17 broke the law. And I'm here to face the responsibility of
18 that. It's pretty simple, your Honor. Whatever you sentence
19 me to, that's what I deserve.

20 THE COURT: So, it is the quality of Mr. Faiella that
21 comes across in that short statement just now and that has come
22 across to the Court previously that is his, in effect,
23 strongest argument for mitigation. When push comes to shove,
24 this gentleman does accept responsibility; doesn't equivocate.
25 There may be things in his submission that are arguable, but

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1 the bottomline is really the one he just expressed so
2 eloquently now.

3 There are other things that also operate in his favor:
4 His medical problems, the situation economically which he found
5 himself in when he undertook this activity, and always very
6 important to the Court, and no less so here, the impact of any
7 sentence on his fine family.

8 But, there is a fair amount on the other side of the
9 balance, much of which I think has been eloquently captured by
10 the government. He continued this activity long after there
11 were warning signs from every corner. He knew from his own
12 past criminal history the nature of the risk he was taking and
13 he willingly assumed those risks. He engaged in activity which
14 I agree with the government is not as simple as defense counsel
15 would argue. He is sought to make use of a novel medium of
16 exchange to facilitate drug purchases in the belief that the
17 very nature of that exchange and its novelty would provide a
18 particularly useful cover. And though I don't know quite what
19 to make of it and it won't be a material fact in my sentence,
20 he apparently did this in collusion with an unnamed individual
21 whose anonymous identity he seeks to take advantage of through
22 his counsel even here today as a mitigating factor for how much
23 money he received. This is not an appealing picture. I agree
24 with the government moreover that this is one of those
25 relatively rare cases where specific deterrence is clearly

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1 called for and general deterrence surely is called for, for
2 reasons already outlined.

3 There is no magic in the guidelines. I pay as little
4 attention to the guidelines as the law permits me to do, and
5 that's very little. Because they are, as I've gotten tired of
6 saying, inherently irrational.

7 THE DEFENDANT: Your Honor --

8 THE COURT: But -- yes.

9 MR. TREANOR: Your Honor, can I have a minute, please?

10 THE COURT: Yes.

11 (Pause)

12 MR. TREANOR: Your Honor, if I could have a minute,
13 please?

14 (Pause)

15 MR. WILSON: Your Honor in the interim I'll just pass
16 up the order of forfeiture to your deputy.

17 THE COURT: Yes.

18 (Pause)

19 THE COURT: Counsel.

20 MR. TREANOR: Your Honor, we're fine to proceed.

21 THE COURT: All right.

22 So I am not being much affected, and rarely have, by
23 the guidelines. What I am affected by is the need for specific
24 deterrence, for general deterrence, for the nature of the crime
25 involved. All of those, regretful to say, cut in favor of a

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1 sentence substantially above that of Mr. Shrem.

2 So the sentence of the Court is that the defendant is
3 sentenced to 48 months in prison, in other words four years; to
4 be followed by three years of supervised release on terms I'll
5 get to in a minute.

6 No fine will be imposed because the defendant has
7 already entered into a very substantial forfeiture agreement
8 which the Court has now signed. There is, however, a special
9 assessment of one hundred dollars that is mandatory and must be
10 paid.

11 The terms of supervised release are:

12 First, the mandatory conditions that the defendant
13 shall not commit any other federal, state, or local crime.

14 The defendant shall not illegally possess any
15 controlled substance.

16 The defendant shall not possess any firearm or
17 destructive device.

18 That the defendant shall cooperate in the collection
19 of DNA.

20 The defendant, within fifteen days of his placement on
21 supervised release, will submit to one drug test, to be
22 followed thereafter by two other unscheduled drug tests as
23 directed by the probation officer.

24 There will also be imposed the standard conditions of
25 supervision 1 through 13. They appear on the face of the

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1 judgment and will be gone over with the defendant by the
2 probation officer when the defendant reports to begin his
3 period of supervised release.

4 Finally, there are the special conditions.

5 First, that the defendant is to report to the nearest
6 probation office within 72 hours of his release from custody.

7 Second, that he will be supervised by the district of
8 his residence.

9 Now, before I advise the defendant of his right of
10 appeal and before we talk about surrender date, is there
11 anything else that either counsel needs to raise with the
12 Court?

13 Anything from the government?

14 MR. WILSON: Two things, your Honor.

15 I think there were a couple of objections which
16 were -- to the PSR which were resolved in a manner by
17 probation. If we could just confirm on the record that there
18 are no continuing objections from the defense to the PSR?

19 THE COURT: Yes.

20 Is that correct?

21 MR. TREANOR: I'm sorry, your Honor?

22 THE COURT: Are there any further objections,
23 continuing objections to the PSR?

24 MR. TREANOR: No, your Honor.

25 THE COURT: Okay.

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1 MR. WILSON: And the other is the government would
2 move to dismiss the open counts.

3 THE COURT: That motion is granted.

4 Anything from defense counsel?

5 MR. TREANOR: Your Honor, a couple of things.

6 First of all, we ask that Mr. Faiella be designated to
7 a facility where we can receive medical attention.

8 THE COURT: Yes. I have no power to order that but I
9 will certainly recommend it. It is well called for here.

10 MR. TREANOR: Thank you, your Honor.

11 With regards to the current conditions of
12 Mr. Faiella's supervision, obviously he's going to have to
13 report to a facility. He's had a lot of difficulty under
14 strict pretrial supervision making medical appointments and the
15 like. I know your Honor may not be in a position to address a
16 motion to adjust his supervision to regular pretrial
17 supervision, but I thought I would raise it now in case it's
18 not a good use of the Court's time to raise such a --

19 THE COURT: If you want to make any alterations,
20 jointly call my chambers with your adversary and I'll take them
21 up. I would only do it with the approval of the probation
22 office, but anything that both the government and the probation
23 office approve, I would be willing to hear. Don't guarantee
24 I'll accept it, but I may.

25 MR. TREANOR: Understood, your Honor.

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1 THE COURT: All right. In terms of surrender, my
2 courtroom deputy suggests Tuesday, March 3 at 2:00 p.m. so
3 unless there's any objection to that, that's what it will be.

4 And Mr. Faiella, you have a right to appeal the
5 sentence.

6 Do you understand that?

7 MR. TREANOR: Your Honor, Mr. Faiella understands he
8 signed away his right to appeal within the plea agreement,
9 but --

10 THE COURT: Yes. I'm sorry. Thank you for reminding
11 me that because the sentence is below the 57 months or below 60
12 months, so you have previously waived your right of appeal. So
13 I have to rephrase that.

14 But you should talk with your counsel anyway to be
15 absolutely sure because if there was any ground for appeal, and
16 I don't see any, but if there were you would have to file your
17 notice of appeal in ten days.

18 Do you understand that?

19 THE DEFENDANT: Yes, I do.

20 THE COURT: And if you do file an appeal and you can't
21 afford counsel for the appeal, the Court will appoint one for
22 you free of charge.

23 Do you understand that?

24 THE DEFENDANT: Yes. I understand.

25 THE COURT: Very good. Thanks a lot.

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1 MR. TREANOR: Your Honor one just issue that I just
2 wanted to just call your Honor's attention to. Mr. Faiella had
3 previously raised this with the government but he has
4 considered back surgery and he is in discussions about when
5 that surgery might take place. It's not scheduled. It's not
6 even definite it's going to happen, but I just wanted to alert
7 your Honor to that.

8 THE COURT: Well I think you need to bring that to a
9 head one way or the other because if he needs back surgery of
10 course we want that to occur but I don't want to be -- receive
11 a call a week before surrender date and say he has just decided
12 to have back surgery. So that needs to be addressed sooner
13 rather than later but thank you for raising it.

14 THE DEPUTY CLERK: Judge I assume he wants to
15 surrender to the institution.

16 THE COURT: Yes.

17 (Adjourned)
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