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June 9, 2023

Honorable Mary Kay Vyskocil
United States District Judge
Southern District of New York
500 Pearl Street
New York, New York 10007

VIA ECF

Re: United States v. Adedayo Ilori
21 Cr. 746 (MKV)

Dear Judge Vyskocil:

Pursuant to the Court's request at the last status conference in the above referenced case, defendant Adedayo Ilori ("Ilori") respectfully submits this letter to report the current status of his sentencing issues and requests. As the Court is aware, the parties have previously filed their respective sentencing submissions and this letter will only address topics not raised in the submissions. I respectfully request time to review the trial record, including all exhibits, in order to determine whether the issues identified below require further briefing.

Total Offense Level

As an initial matter, the Presentence Investigation Report ("PSR") calculates Ilori's Total Offense Level to be 40 (PSR ¶ 70, 75). However, a review and tally of the United States Sentencing Guidelines ("Guidelines") calculation set forth in paragraphs 74 reveals that the point total, and corresponding Total Offense Level is 38, not 40.

Request for a *Fatico* Hearing

Ilori concedes that he is not entitled to a *Fatico* Hearing regarding factual issues that were fully litigated during the trial of the instant case. *See United States v. Guang*, 110 F.3d 110, 122 (2d Cir. 2007). Below, Ilori lists the sentencing issues that he has not had the opportunity to address to date:

Loss Amount (¶ 67)

As stated in his sentencing submission, Ilori objects to a loss determination derived from “intended loss” rather than “actual loss.” In the event that the Court does apply the “intended loss” approach, he objects to the inclusion of two items listed in Government Exhibit 750 in his loss calculation, (1) Source 4 Jet Corp./ William Jamison and (2) Creative Media Software Solution Inc./Thomas Hockenberry. He submits that inclusion of these items in loss calculation has not been sufficiently addressed so as to preclude a *Fatico* Hearing.

More than 10 Victims Enhancement (§ 68)

Defendant submits that the Small Business Administration was the only victim. Therefore, the 10 or more victims enhancement is not applicable.

Access Device/Authentication Feature Enhancement (§ 70)

To the extent that this enhancement is applied regarding authentication features, defendant objects. Application Note 10 to Guidelines § 2B1.1(b)(11) states that the application definition of an authentication feature is set forth in 18 U.S.C. § 1028(d)(1) and this definition requires that feature “be used by an issuing authority.” An “issuing authority” must be “a governmental authority entity or agency that is authorized to issue identification documents.” 18 U.S.C. § 1028(d)(6)(A). Ilori asserts that any authentication features that are relevant to his case were not issued by a governmental authority.

Additional Concern

Ilori has requested that he not be sentenced prior to receipt of the sealed portion of his trial transcript. I have initiated the process of obtaining those minutes by submitting an “Auth 24” request on the E-voucher system for Court authorization of payment to the Southern District Reporters.

Conclusion

Taking into account the time requirements of other commitments, I estimate that review of the record, exhibits and related materials will take approximately three weeks. I am in possession of the trial minutes, save the sealed proceeding, and exhibits. Additionally, to facilitate prompt resolution of the above identified sentencing issues, the government has agreed to identify any discovery materials that they are aware that address the concerns raised by defendant.

Thank you for Your Honor’s consideration of this letter and I await direction based on the information reported herein.

Very truly yours,
Sanford Talkin
Sanford Talkin

cc: AUSA David Felton (by ECF)
AUSA Juliana Murray (by ECF)