U.S. Department of Justice

United States Attorney
Southern District of New York

The Silvio J. Mollo Building
One Saint Andrew's Plaza
New York, New York 10007

July 14, 2023

BY ECF

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

Re: *United States v. Adedayo Ilori*, S1 21 Cr. 746 (MKV)

Dear Judge Vyskocil:

The Government respectfully writes regarding the sentencing of defendant Adedayo Ilori ("Ilori" or the "defendant") in the above-captioned case, in response to defense counsel's letter dated July 13, 2023. (Dkt. 136.) For the reasons described in detail in the Government's June 28, 2023 submission, the Government has established by a preponderance of the evidence that the challenged sentencing enhancements apply. (Dkt. 130.) Ilori is not entitled to a *Fatico* hearing regarding either of the factual issues he raised in his July 13, 2023 letter, *see United States v. Phillips*, 431 F.3d 86, 983 (2d Cir. 2005), and the Court should schedule sentencing in this case.

1) Gross Receipts Enhancement (Paragraph 70)

Ilori first continues in his challenge to the enhancement relating to his receipt of more than $1 million from banks. The Court should reject this challenge without a hearing.

Ilori was the leader of the fraud scheme, and he controlled the fraudulent bank accounts that he and Recamier opened in the names of identity theft victims, into which they directed the $1,024,625 in funded fraudulent loans. The Court has ample evidence about Ilori's control over those accounts, including his possession of bank cards for the bank accounts that received the more than $1 million in fraud proceeds and accounts into which those proceeds were funneled, and the fact that Ilori's phone number was associated with those accounts. The evidence presented at trial included, among other things, a recorded call from Ilori (posing as identity theft victim Jonathan Herttua) to Charles Schwab regarding the Schwab bank account to which approximately $40,000 in fraud proceeds were routed. (GX 243, 708, 709; Trial Tr. 75-76, 609.)

Ilori is further linked to the $1 million in gross receipts through his control of the 0642 phone, which the trial evidence established Ilori possessed and was arrested with. This phone number was provided in connection with the Chase, Capital One, and HSBC accounts that together received more than $1 million in bank funds. (*See* GX 740C, 700.) In addition, the 0642 phone number was associated with the Robinhood account to which approximately $230,000 in fraud proceeds were routed, among other accounts. (GX 709.)

Further, as previously described, in Chris Recamier's post-arrest statement, Recamier unambiguously confirmed that Ilori controlled the stolen money. (Dkt. No. 33, Ex. B, at 53.) Recamier also confirmed that Recamier did not have direct access to the stolen funds. (*Id.* at 53-54.)

The law is clear that the sentencing court "is entitled to rely on any type of information known to it" in resolving sentencing disputes. *United States v. Tracy*, 12 F.3d 1186, 1203 (2d Cir. 1993) (citing *United States v. Carmona*, 873 F.2d 569, 574 (2d Cir. 1989)). "[A] sentencing court, like a jury, may base its fact-finding on circumstantial evidence and on reasonable inferences drawn therefrom." *United States v. Gaskin*, 364 F.3d 438, 464 (2d Cir. 2004).

The evidence that Ilori individually received more than $1 million from banks is overwhelming and certainly exceeds the requisite preponderance standard. *See* Gov't Sent. Sub. at 9. Accordingly, the gross receipts enhancement under U.S.S.G. § 2B1.1(b)(17)(A) applies.

2) Enhancement for 10 or More Victims (Paragraph 68)

Ilori next continues in his attack relating to the enhancement for ten or more victims. This too is meritless and should be denied without a hearing.

Plainly, Ilori's offense conduct—involving massive fraud and money laundering committed and advanced through the use of stolen identities—involves "means of identification." As a result, the specific definition of victims included in Application Note 4(E) to Section 2B1.1 of the Guidelines applies. Under that Note, as Ilori acknowledges, the definition of "victim" includes "any individual whose means of identification was used unlawfully or without authority." U.S.S.G. § 2B1.1, Application Note 4(E). As proven at trial, the crimes of conviction involved the defendant's use of at least 18 identities belonging to victims. (*See* GX 730.) As a result, this enhancement clearly applies, and the facts upon which it may be imposed are available to the Court through the trial evidence. No hearing is necessary.

* * *

As set forth above and in the Government's prior submissions, the defendant's objections to the Guidelines Range, as calculated by the PSR, should be rejected. The Court has ample evidence from the trial in this matter to resolve these disputed issues. No *Fatico* hearing is necessary.

* * *

The Government respectfully requests that the Court set sentencing. The parties have conferred and are available the following dates and times:

Thursday, July 27, 2023: 12:00 – 5:00 p.m.
Tuesday, August 8, 2023: 12:00 – 5:00 p.m.
Wednesday, August 9, 2023: 12:00 – 5:00 p.m.
Friday, August 11, 2023: 9:00 a.m. – 5:00 p.m.

Respectfully submitted,

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By: /s/ ____________________________
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cc: Sanford Talkin, Esq. (via ECF)