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

October 13, 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 in response to the October 10, 2023 letter of defendant Adedayo Ilori ("Ilori" or "the defendant"), and the Court's Order of the same date, regarding forfeiture. (Dkt. 142, 143). For the reasons set forth below, *Honeycutt v. United States*, 581 U.S. 443 (2017), does not warrant reducing the defendant's forfeiture liability.[1]

The Government also writes to advise the Court of an error in the Government's prior Guidelines calculation and to provide a corrected calculation of the Guidelines applicable to Ilori.

Forfeiture and *Honeycutt*

Applicable Legal Principles. Criminal forfeiture is "an aspect of sentencing," *Libretti v. United States*, 516 U.S. 29, 49 (1995), that is "mandatory," *United States v. Viloski*, 814 F.3d 104, 112 n.11 (2d Cir. 2016). Under Rule 32.2 of the Federal Rules of Criminal Procedure, once a criminal defendant is convicted of the offenses giving rise to the forfeiture allegations in an indictment, the district court must determine what property is subject to forfeiture and, if appropriate, enter a preliminary order of forfeiture. Rule 32.2(b)(1)(A) provides for both criminal forfeiture of specific property, as well as a personal money judgment.

As relevant to forfeiture, Ilori was convicted of fraud crimes, giving rise to the forfeiture of proceeds of those crimes. *See* 18 U.S.C. § 982(a)(2)(A). He was also convicted of a money laundering offense, giving rise to the forfeiture of the property involved in the money laundering. *See* 18 U.S.C. § 982(a)(1). Under either mechanism of forfeiture, the defendant is subject to the full amount of forfeiture, and *Honeycutt* has no impact on that analysis.

[1] For clarity, the Government is seeking forfeiture of $1,024,625, (Dkt. 130-1), not $1,039,424.27, (Dkts. 120-3; 142 at 1).

As for fraud crime forfeiture, proceeds of a crime "need not be personally or directly in the possession of the defendant . . . in order to be subject to forfeiture," but rather "must have, at some point, been under the defendant's control . . . in order to be considered acquired by him." *United States v. Contorinis*, 692 F.3d 136, 147 (2d Cir. 2012).[2] The Second Circuit has held that a defendant "controls" funds, giving rise to forfeiture liability, to the extent he can have the funds transferred to third parties or for his own benefit—even if those funds were never held in his own accounts. *See United States v. Bergstein*, 788 F. App'x 742, 748 (2d Cir. 2019) (summary order) (ordering forfeiture post-*Honeycutt* where the defendant "effectively controlled the proceeds of the [third party investment funds] as he was able to transfer the funds to shell companies and use the funds for personal expenses"). Moreover, temporary control is sufficient, and the defendant need not retain the proceeds. *See United States v. Tanner*, 942 F.3d 60, 68 (2d Cir. 2019); *Rajaratnam v. United States*, 736 F. App'x 279, 284 (2d Cir. 2018) (summary order) (even if proceeds of insider trading were subsequently distributed to investors, with the defendant personally retaining only a percentage as management fees, "he nonetheless had authority over disbursements, and, thus, exercised 'control' over the proceeds 'at some point.'") (quoting *Contorinis*, 692 F.3d at 147); *United States v. Ohle*, 441 F. App'x 798, 803 (2d Cir. 2011) (rejecting challenge to forfeiture order that "appears to rest on the mistaken premise that [defendant] can only be required to forfeit fraud proceeds that he personally kept"); *United States v. Uddin*, 551 F.3d 176, 181 (2d Cir. 2009) (affirming forfeiture order based on entire amount of proceeds initially received by defendant, "whether or not Uddin shared the cash he received"); *see also* 21 U.S.C. § 853(p)(1)(B) (permitting forfeiture of substitute assets from defendant where he has caused forfeitable property to be "transferred or sold to, or deposited with, a third party").

As for money laundering forfeiture, it is settled law in this Circuit that in a money laundering case, the Government may seek a money judgment up to the full value of funds laundered by the defendant. *United States v. Bermudez*, 413 F.3d 304, 305-06 (2d Cir. 2005). In imposing sentence on a person convicted of an offense in violation of Title 18, United States Code, Section 1956, as Ilori was, the Court "shall order that the person forfeit to the United States any property, real or personal, involved in such offense, or any property traceable to such property." *Id.* at 306 (quoting 18 U.S.C. § 982(a)(1)). Once 18 U.S.C. § 982(a)(1) is satisfied, "a district court has no discretion not to order forfeiture in the amount sought." *Viloski*, 814 F.3d at 112 n.11.

The scope of this forfeiture liability is specifically authorized by statute, and is not based on joint-and-several liability. In imposing sentence on a person convicted of an offense in violation of Title 18, United States Code, Section 1956, the Court "shall order that the person forfeit to the United States any property, real or personal, involved in such offense, or any property traceable to such property." *Bermudez*, 413 F.3d at 306, 18 U.S.C. § 982. Property "involved in" a money

---

[2] Prior to the Supreme Court's decision in *Honeycutt*, the Second Circuit also held defendants jointly and severally liable for proceeds acquired by co-conspirators. *Contorinis*, 692 F.3d at 147. *Honeycutt* rejected such co-conspirator liability, however, and held that a defendant is only liable for the proceeds of the offense he personally controlled, either directly or indirectly.

laundering offense plainly constitutes at least the actual funds laundered. *See In re 650 Fifth Ave and Related Props.*, 777 F. Supp 2d 529, 570 (S.D.N.Y. 2011).

As noted above, Title 18, United States Code, Section 982(a)(1) subjects to forfeiture "any property, real or personal, involved in [a violation of 18 U.S.C. § 1956], or any property traceable to such property." Property "involved in" a money laundering offense includes not only the illegal proceeds themselves, but also any property used to facilitate the laundering of such proceeds, such as business, business premises, untainted funds comingled with criminal proceeds, and bank accounts of corrupt businesses. *See United States v. All Assets of G.P.S. Auto. Corp.*, 66 F.3d 483, 486 (2d Cir. 1995) (affirming forfeiture of all assets of corporation that "served as a conduit for the proceeds of the illegal transactions"); *United States* v. *Schlesinger*, 261 F. App'x 355, 361 (2d Cir. 2008) (summary order) (same); *In re 650 Fifth Ave.*, 777 F. Supp. 2d at 567 ("The ability to forfeit a business entity which is used to facilitate the offense of money laundering is well established." (internal quotation marks omitted)).

Discussion. To start, Ilori's invocation of *Honeycutt* is inapposite, because the Government's proposed forfeiture judgment does not hold him jointly and severally liable for crime proceeds obtained by him and his co-conspirator Chris Recamier; rather, the proposed money judgment is equal to the amount of property actually acquired (the fraud proceeds) and laundered by the defendant, and thus "involved in" the offenses. *See Bermudez*, 413 F.3d 304.

The defendant's argument that, because Recamier acquired an unspecified portion of the crime proceeds, Ilori could not have *also* acquired the laundered funds is incorrect. In the context of a narcotics conspiracy, *Honeycutt* circumscribed the Government's ability to impose forfeiture on a defendant jointly and severally with his co-conspirators for all proceeds obtained by the conspiracy, and instead, pursuant to 21 U.S.C. § 853, limited forfeiture to the amount of proceeds a defendant personally obtained as a result of the offense. 581 U.S. at 448-50, 453-54. However, the *Honeycutt* Court made clear that defendants who come into possession of funds, or who acquire those funds, may be said to have "obtained" them for purposes of forfeiture liability. 581 U.S. at 449-50.

Here, even if Recamier also controlled a portion of the bank accounts used in the offense conduct at some time, so too did Ilori. Indeed, Ilori clearly had dominion and control of *all* of the proposed forfeitable property (he "obtained it"), for a substantial period of time. The Government's proposed forfeiture order seeks to forfeit the Coinbase Account, Robinhood Account, and Charles Schwab Account, enumerated in the Superseding Indictment, as well as a money judgment in the amount of $1,024,625. The listed enumerated accounts received deposits of fraud proceeds and were used to launder the criminal proceeds, and Ilori had dominion and control over these accounts. They are thus forfeitable as the proceeds of fraud, pursuant to 18 U.S.C. § 982(a)(2)(A), and as property involved in money laundering, pursuant to 18 U.S.C. § 982(a)(1).

Ilori's 0642 Phone, which was the subject of extensive trial evidence and testimony and which was recovered from Ilori's car when he was arrested, was linked to both the Robinhood and

Coinbase account, as well as a host of loan applications and bank accounts used in Ilori's fraud and money laundering offenses. (*See, e.g.*, GX 155; GX 252; GX 660A; GX 705; GX 740C; GX 750.) Additionally, the iPhone 12 that was on the defendant's person at the time he was arrested was used to access the Robinhood account. (GX 665.) And the Government's evidence at trial showed that, when IP address records were combined with surveillance video, Ilori accessed both the Robinhood and Charles Schwab Accounts from his fraud office at the Purves Street Apartment on June 26, 2021 and July 21, 2021, respectively. (GX 308; GX 309; GX 325; GX 327; GX 720.) In short, the money judgment reflects the actual proceeds that Ilori personally obtained, controlled, and laundered through his fraudulent loan applications and money laundering transactions, and are thus forfeitable as the proceeds of fraud, pursuant to 18 U.S.C. § 982(a)(2)(A), and as property involved in money laundering, pursuant to 18 U.S.C. § 982(a)(1). As such, imposing forfeiture liability up to the amount of the funds Ilori actually acquired and laundered is wholly consistent with the approach to possession taken in *Honeycutt*.

Applicable Guidelines Range

In preparing for Ilori's sentencing, the Government has identified an error in its (and the Probation Department's) prior Guidelines calculation. The two-level enhancement under U.S.S.G. § 2B1.1(b)(11)(A)(i), (ii), and (b)(11)(C)(ii) does not apply to the combined offense level calculation, because Ilori was *also* convicted of aggravated identity theft, in violation of 18 U.S.C. § 1028A. *See* U.S.S.G. § 2B1.6, Application Note 2.

Accordingly, the Government respectfully requests that the Court make the following additional corrections to the Final Presentence Investigation Report ("PSR"), dated February 14, 2023 (Dkt. 113), during sentencing: delete paragraph 70 and revise the adjusted offense level to 38 (PSR ¶ 78 and page 33), for a total Guidelines range on Group One (Counts One to Four and Six) of 324 to 405 months.

Nevertheless, the Government continues to adhere to its sentencing recommendation, that a sentence of at least 25 years' imprisonment, to run consecutive to the defendant's other sentence, is warranted in this case.

Respectfully submitted,

DAMIAN WILLIAMS
United States Attorney for the
Southern District of New York

By: /s/
Juliana N. Murray
Daniel G. Nessim
David R. Felton
Assistant United States Attorneys
(212) 637-2314 / -2486 / -2299

cc: Sanford Talkin, Esq. (via ECF)