UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TENNESSEE
AT GREENEVILLE

UNITED STATES OF AMERICA	)	
	)	
v.	)	No. 2:22-CR-76
	)	JUDGE GREER
CHAD BRANDON THOMAS	)	

UNITED STATES' SENTENCING MEMORANDUM

The United States, through the United States Attorney for the Eastern District of Tennessee, files this sentencing memorandum in accordance with Rule 83.9(j), Local Rules (E.D. Tenn.).

The United States requests that the Court sentence defendant to a term of imprisonment of 41 months. This sentence is the top of defendant's advisory Guideline range as currently calculated (without considering the prior objections filed by the United States based on defendant's previously filed motion to withdraw his plea). The heightened aggravation in this case provides ample support for the requested sentence. The requested sentence properly balances the sentencing factors under 18 U.S.C. § 3553(a) and is a sentence that is "sufficient, but not greater than necessary" to comply with the statutory purposes of sentencing. 18 U.S.C. § 3553(a).

I. PROCEDURAL BACKGROUND

The Court is well aware of the procedural background in this case, and the United States outlined that procedural background in its opposition to defendant's motion to withdraw his guilty plea. Instead of restating that procedural background here, the United States incorporates its previously filed opposition to defendant's motion to withdraw his plea agreement and the overview of the case set forth in that pleading. [*See* Doc. 54].

Sentencing currently is set for August 21, 2023, at 3:00 p.m.

II. FACTUAL BACKGROUND

The facts are outlined in defendant's plea agreement [Doc. 3 at 2-7] and the Presentence Investigation Report ("PSR") [Doc. 29 at 5-8]. The facts of the case are undisputed. Defendant fraudulently obtained three Payroll Protection Program ("PPP") loans in the total amount of $307,700. In the third—and most egregious—defendant formed a business entity in the state of Tennessee named Kingdom of God, Inc. He then falsely represented several religious celebrities, including a now-deceased minister with a global television ministry, was one of defendant's full-time employees.

In all, defendant misrepresented the true state of affairs, obtained monies meant by Congress to stem the effects of a global pandemic, and obtained funds that were never meant for him—all through lies and misrepresentations.

III. STATUTORY MAXIMUM SENTENCE

Defendant is guilty of wire fraud in violation of 18 U.S.C. § 1343. For that offense, defendant faces a statutory maximum sentence of not more than 20 years in prison, a fine of not more than $250,000, supervised release of not more than three years, and a special assessment of $100. *See* 18 U.S.C. §§ 1343, 3571(b)(3), 3583(b)(2), and 3013(a)(2)(A).

IV. ADVISORY GUIDELINE RANGE AND GUIDELINE OBJECTIONS

The advisory guidelines are important because, upon appellate review, sentences falling within those guidelines "are generally presumed to be reasonable." *United States v. Muchow*, 924 F.3d 272, 275 (6th Cir. 2019); *see United States v. Vonner*, 516 F.3d 382, 389 (6th Cir. 2008) (presumption of reasonableness appropriate because "there is a confluence between the national views of the Sentencing Commission and the independent views of a sentencing judge, [and] that 'double determination significantly increases the likelihood that the sentence is a reasonable one") (citation omitted).

Here, the United States Probation Office calculated an offense level of 20 and a criminal history category of I. PSR at ¶¶ 48 and 57. Defendant has not objected to the PSR at this point. The United States has filed objections to the PSR that were based upon defendant's previously filed motion to withdraw his guilty plea. Specifically, the United States had objected to a one-level objection for accepting responsibility and had advocated for an obstruction enhancement if defendant's testimony at his change of plea hearing was not truthful. Because defendant has now withdrawn his motion to withdraw his guilty plea [*See* Doc. 66], the United States no longer objects to the non-inclusion of an obstruction enhancement. The United States is not, however, filing a motion for acceptance of responsibility on defendant's part. Nonetheless, the recommendation here would be within the Guideline range of either the score Probation computed or if the offense level was level 21. In other words, regardless of whether defendant gets an extra point, the United States is still requesting a 41 month sentence.

V. 18 U.S.C. § 3553(a) FACTORS

The Government's requested 41-month sentence properly accounts for each of the sentencing factors outlined in 18 U.S.C. § 3553(a). Notably, the nature and circumstances of the offense, the history and characteristics of the defendant, the need to promote respect for the law (by defendant and generally), the need for specific and general deterrence, and the need to treat similarly situated offenders the same each support the requested sentence here.

A. The Nature and Circumstances of the Offense

Initially, the Court must look to the *nature* and *circumstances* of the offense. This factor readily supports the Government's recommendation.

Regarding the *nature* of defendant's offenses, potential punishment shows the crimes are serious. Defendant faces 20 years for wire fraud. That length of time is serious and makes defendant's offense a Class C felony—just two from the top of the Congressional classification scheme. *See* 18 U.S.C. § 3559(a).

The *circumstances* of defendant's scheme—to fleece the government—also show extremely heightened aggravation. The guidelines capture some of this aggravation with certain specific offense characteristics (loss amount, sophisticated means, and impersonating a charitable organization). Non-guideline aggravation exists, too.

The first requested guideline aggravation is loss. The guidelines counsel that the more a person steals, the higher his or her sentence should be. Here, the guidelines call for a 12-level increase for losses between $250,000 and $550,000. *See* USSG §2B1.1(b)(1)(G). As the Sixth Circuit once observed, "The purpose of these loss gradations is to ensure that, the more harm the conduct at issue threatens [or causes], the more severely it is punished. In essence, '[t]he Guidelines use loss as a proxy for the seriousness of the fraud.'" *United States v. Simpson*, 538 F.3d 459, 464 (6th Cir. 2008) (citation omitted). Much of the offense level score increase advocated here is due to that increased loss amount. The loss amount here is actual money stolen, so it shows the seriousness of defendant's offenses and is a good proxy for the time defendant should serve.

These losses show heightened aggravation in a few other ways. First, the losses here are not to any one individual or company. Instead, these losses will be absorbed by the United State taxpayers. Even worse, these losses involved the blatant swindle of a program created in the face of a global pandemic. The funds defendant stole were intended to avoid massive business failures in the midst of a nationwide alarm due to the initial spread of COVID-19. Defendant used a nationwide pandemic and a program designed to ease its economic impact for his own greed.

The next guideline aggravation is "sophisticated means." Here, the guidelines counsel that a thief who conceals his or her tracks by "hiding assets or transactions" should be punished more severely than one who does not. *See* USSG §2B1.1, comment. (n.9(C)). Defendant is sophisticated when it comes to business matters. He has operated businesses in the past. Here, he fabricated at least one business, used phony business records and the anonymity of online financial transactions to accomplish his theft. The sophisticated means defendant used makes his crime more aggravated than others.

The other aggravating factor here is the impersonation of a religious organization. Defendant called his sham business "Kingdom of God, Inc." and represented to lenders that well-known ministers with nationwide audiences were on his payroll. That conduct earned a two-level increase under U.S.S.G. § 2B1.1(b)(9)(A). That conduct, moreover, is simply reprehensible when considering the state of emergency and the PPP program defendant exploited. Put simply, that fact is very aggravating, and that conduct accounted for nearly half of the loss here.

Apart from these well-defined, guideline aggravators, some non-guideline aggravation exists, too. For instance, defendant did this repeatedly. This was not a one-time fraud. Defendant stole from the public fisc three times. Additionally, the Guidelines do not fully capture the gravity of a fraud like this that used a global pandemic and steal money allocated to businesses that really needed it and, importantly, to workers who faced the very real risk of job loss.

Accordingly, the serious *nature* of the offenses and the aggravating *circumstances* here support the Government's recommended sentence.

B. The History and Characteristics of the Defendant

Although the nature and circumstances of the offense provide overwhelming aggravation, defendant's history and characteristics provide some, too.

Defendant does not have a bad criminal record in terms of score—he is a zero-point offender. Notwithstanding that, defendant's crimes directed at his ex-spouse, to include trespassing and violating injunctions, show an escalating pattern of lack of respect for the law. These matters are addressed more fully in the opposition the United States filed to defendant's motion to withdraw his plea. While no need exists to elaborate on them further exists, they are concerning and show that the need to promote respect for the law and protect others, including defendant's former spouse, are weighty sentencing factors here.

. Equally concerning is defendant's history of substance abuse and its effects on him when using drugs. The competency evaluation in this case discussed those factors at length, and the United States simply notes them here in terms of defendant not being an average zero-point offender.

C. The Statutory Purposes of Sentencing

The need to address the statutory purposes of sentencing also supports the Government's recommendation. The Government's requested sentence recognizes the seriousness of the offense and provides just punishment. *See* 18 U.S.C. § 3553(a)(2)(A). The requested sentence also will promote respect for the law and the rights of taxpayers who are the ultimate victims in this case.

The Government's requested sentence also will afford deterrence and protect the public from future crimes. *See* 18 U.S.C. §§ 3553(a)(2)(B) and 3553(a)(2)(C). No serious question exists about incarceration being able to deter crimes like this.

General deterrence is weighty here, too. This was a swindle that targeted a worldwide pandemic involving over a million deaths and government efforts to keep the nation afloat in the interim. The Court can send a loud and clear message with this sentencing that is not at play in normal fraud cases. The requested sentence will afford some measure of punishment to hopefully deter behavior like this from others.

D. The Need to Avoid Unwarranted Sentencing Disparities

The Government's recommended sentence will avoid unwarranted sentencing disparities. *See* 18 U.S.C. § 3553(a)(6). The recommended sentence should be within the defendant's advisory guidelines if the Court sustains the government's objections. A sentence within the advisory guidelines, of course, serves the sentencing purpose of treating similar offenders similarly. A primary reason why Congress established the United States Sentencing Commission and authorized promulgated guidelines was to provide "reasonable uniformity in sentencing by narrowing the wide disparity in sentences imposed for similar criminal offenses by similar offenders." USSG Ch.1, Part A, intro. comment. (n.3). The Government's recommended sentence should be within defendant's Guideline range (with or without an acceptance reduction) and, by definition, will support this factor.

Indeed, when considering this factor, the Court needs only to correctly compute the Guidelines. "For when a district court correctly does so, it has 'necessarily taken into account the need to avoid unwarranted sentence disparities, viewed nationally.'" *United States v. Hymes*, 19 F.4th 928, 935 (6th Cir. 2021) (quoting *United States v. Houston*, 529 F.3d 743, 754 (6th Cir. 2008)).

E. The Need for Restitution

Restitution is another factor at play. *See* 18 U.S.C. § 3553(a)(7). No realistic potential of repayment exists in this case based on defendant's prior record of making payment and employability, so the need to provide restitution also weighs in favor of the requested sentence.

Pre-case seizures has also secured substantial funds already.

VI. CONCLUSION

For the reasons outlined above, the United States respectfully requests that the Court sentence defendant to a 41-month term of imprisonment.

Respectfully submitted, this the 14th day of August, 2023.

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