UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

Case No. 25-cr-20014-Cr-ALTONAGA

UNITED STATES OF AMERICA

v.

ANGELO STEPHEN,

Defendant.
_________________________________/

GOVERNMENT'S SENTENCING MEMORANDUM

COMES NOW the United States, by and through the undersigned Assistant United States Attorney, and files this Sentencing Memorandum, which also addresses defendant Angelo Stephen's Sentencing Memorandum ("Memorandum"), stating as follows:

Factual Background

The facts of this case are laid out in the Stipulated Factual Basis, DE 15, and in the very thorough Pre-Sentence Investigation Report ("PSR") prepared by U.S. Probation Officer Febus, DE 23 at ¶¶ 15-28. This Sentencing Memorandum readopts and incorporates those facts herein, and notes that as previously reported to Officer Febus, the government has no objections to the PSR.

At the time the defendant committed his crimes, he was employed by the Federal Bureau of Prisons ("BOP") as a Correctional Officer at the Federal Correctional Institute-Miami ("FCI-Miami"). PSR at ¶¶ 15, 72; DE 15 at 1. During the time that he was so employed, the defendant engaged in a multi-prong wire fraud scheme as described in the Information, which charged him with two types of COVID-19 relief fraud and with participating in two fraudulent financial institution account takeovers.

The EIDL Fraud

First, in August 2020, the defendant fraudulently applied for and obtained a Small Business Administration ("SBA") Economic Injury Disaster Loan ("EIDL") loan of $20,000 directly from the SBA. His application for that loan falsely claimed that he had earned approximately $62,016 in gross revenues and employed 10 people in an event planning and entertainment services business during 2019. PSR at ¶¶ 23; DE 15 at 5. This application was totally false as he had no such business. This fraudulently obtained loan was not repaid and as a result, the SBA is the victim of this fraud.

The PPP Fraud

The defendant also fraudulently obtained two Paycheck Protection Program ("PPP") loans during 2021. Both of these PPP loan applications falsely claimed that the defendant was a sole proprietor whose 2020 business income was $106,554, and both included a fraudulent IRS Form 1040 Schedule C for 2020 that made the same false claim about his supposed business' gross income. The first PPP loan was obtained from Harvest Small Business Finance ("Harvest"), and the second-draw loan was obtained Capital Plus, both of which were SBA-approved PPP lenders. Both of these loans were for $20,833, although the defendant's credit union actually returned $19,000 of the loan proceeds to Harvest before the defendant had spent or transferred it. PSR at ¶¶ 24, 25; DE 15 at 5-7.

Neither PPP loan was forgiven, the SBA has not reimbursed either lender for the loans they provided, and the loans have not been repaid by the defendant. As a result, the lenders are the victims, although the reimbursement amount owed to Harvest should be reduced by the $19,000 that it received back from the defendant's credit union before the fraud was revealed.

The Account Takeover Frauds

What distinguishes this case from the mainstream of PPP and EIDL fraud cases involving police officers and correctional officers, who collectively are entrusted with significant powers and responsibilities as important participants in the criminal justice system, is the fact that the defendant's criminal activity was not limited to defrauding the Federal government, via the SBA's direct loan EIDL program, and the SBA-approved lenders participating in the PPP loan program. Instead, unlike similarly employed defendants in other COVID-19 fraud cases, this defendant also participated in two account takeover schemes that victimized innocent individuals who he did not know and with whom he had absolutely no connection.

Victim 1 was a resident of Virginia who in late March 30, 2023, had $20,000 fraudulently wire transferred out of his Wells Fargo account into an account at Chase Bank that the defendant had recently opened. After receiving this fraudulently obtained wire transfer, the defendant quickly drained that $20,000 out of his account via withdrawals and Zelle transfers. PSR at ¶ 26; DE 15 at 7. Victim 1 was not reimbursed by Wells Fargo for the loss, and thus is entitled to $20,000 in restitution.

Victim 2 was an individual who maintained an account at Guardians Credit Union ("Guardians"). In late June and early July 2023, the defendant and his accomplices were able to fraudulently obtain new checks on Victim 2's account from Guardians without Victim 2's knowledge, authorization, or consent, and the defendant went to a Guardians branch and cashed one of those checks that was made out to him, fraudulently obtaining $8,500 in cash from Victim 2's account. Victim 2 had not written or authorized the writing of this check, which had the word "Remodeling" on the memo line, nor had he ever employed the defendant to do any remodeling work. PSR at ¶ 27; DE 15 at 7. Victim 2 was reimbursed the full $8,500 by Guardians, and thus has no restitution due to him. However, Guardians is entitled to $8,500 in restitution since it took on the loss caused by the defendant's actions.

The Advisory Sentencing Guidelines Range

This Court is required to first compute an advisory Guidelines range before it applies the 18 U.S.C. §3553(a) factors to determine the defendant's ultimate sentence. *See United States v. Crawford*, 407 F.3d 1174, 1178 (11th Cir. 2005). The PSR computed the Total Offense Level to be level 9, with the defendant having zero criminal history points and being in Criminal History Category I, leading to an advisory Guidelines sentencing range of 4-10 months. PSR at ¶¶ 43, 46, 89. The government agrees with this calculation and acknowledges that the advisory Guidelines sentence is in Zone B, as does the defendant. DE 22 at 1.

The Allowable Sentences and the § 3553(a) Factors

In his Memorandum, the defendant asks this Court to impose a sentence of probation with conditions of mental health and substance abuse treatment. His Memorandum focuses on three factors: the history and characteristics of the defendant; a claimed need to avoid unwarranted sentence disparities with other defendants found guilty of similar conduct; and dangerous overcrowding in the BOP facilities. DE 22 at 10. In addition, the defendant cites to Guidelines § 5C1.1, Application Note 10(A), which states that a sentence other than imprisonment is generally appropriate for a defendant in Zone B who receives the Zero-Point Offender reduction.

The government does not dispute that a sentence of probation is one of the allowable options for a defendant within Zone B, albeit with a special condition of intermittent confinement, community confinement, or home detention per the schedule laid out in Guidelines §§ 5C1.1(c)(3), 5C1.1(e)(1)-(3). However, even though § 5C1.1 Application Note 10(A) states that a non-incarceration sentence is "generally appropriate" for a defendant with the advisory Guidelines applicable to this defendant, in this particular case, the government does not believe that a sentence of probation is sufficient to satisfy the purposes of sentencing set out in § 3553(a). Rather, the government respectfully suggests that the necessary and reasonable sentence is one that includes a short period of incarceration followed by a three-year term of supervised release with conditions including a short period of home confinement, substance abuse and mental health treatment, and community service, as well as full restitution to the victims.

Section 3553(a)(1) – The Nature of Defendant's Offense

The first part of §3553(a)(1) focuses on the nature and circumstances of the offense committed. As set out in the Stipulated Factual Basis and PSR, the defendant, despite maintaining his BOP employment during the COVID-19 pandemic, fraudulently obtained two $20,833 PPP loans and a $20,000 EIDL, thereby fraudulently obtaining approximately $61,666 in COVID-19 relief funds that he was not entitled to. Abusing these well-intended COVID-related emergency relief programs by fraudulently obtaining multiple loans to which he was not entitled clearly was a serious offense.

While this COVID-19 relief fraud would be serious standing alone, the defendant also participated in two account takeover schemes, receiving $20,000 via a fraudulently conducted wire transfer from the bank account of an individual in Virginia (Victim 1), and cashing a fraudulently obtained check for $8,500 that was drawn on the account of a different unsuspecting victim (Victim 2). The harm caused by this additional conduct magnifies the seriousness of the defendant's conduct, particularly since the bank was unwilling to reimburse Victim 1 for the $20,000 that was taken from him.

In addition, the seriousness of the defendant's criminal conduct is enhanced not only by the fact that the defendant obtained multiple loans, but also by the fact that he was a Federal Correctional Officer. The fact that the defendant was empowered and relied upon to play an important role in the criminal justice and rehabilitation system and instead chose to break the law for personal enrichment is another consideration that supports the government's request for a sentence that includes a period of incarceration.

Section 3553(a)(1) – The Defendant's History and Characteristics

The second part of §3553(a)(1) focuses on the history and characteristics of the defendant. Prior to engaging in the criminal activity to which he pled guilty, it appears from the PSR and the defendant's Memorandum that he was a productive citizen, remaining employed and staying involved in his son's rearing and life. PSR at ¶¶ 59, 72-76; DE 22 at 3-5. As such, this factor, and the defendant's very early acceptance of responsibility and willingness to plead guilty to an Information, certainly weigh in the defendant's favor, and they factor into the government's position that a low-end sentence, albeit one with a short period of incarceration, is sufficient to achieve the purposes of sentencing for this particular defendant.

Section 3553(a)(2)

Section 3553(a)(2) is aimed at ensuring that the sentence imposed serves the various purposes stated in subparts (A) – (D), including imposing a sentence that reflects the seriousness of the offense and provides just punishment and promotes respect for the law, provides adequate deterrence, protects the public from a risk of recidivism, and provides the defendant with needed medical care in the most effective manner.

The undisputed seriousness of the defendant's criminal activity has already been discussed above. In light of that seriousness, the government believes that a crime of this nature should not merely result in probation. Instead, it should include a period of incarceration to truly provide just punishment and promote the needed respect for the law where the defendant not only defrauded government relief programs set up to try to save small businesses and the jobs they provide but also participated in account takeover schemes that stole money from two total strangers.

Moreover, even if this experience and its consequences, including his willingness to quickly accept responsibility, in combination with substance abuse and mental health treatment, likely will reduce the risk of recidivism by this defendant, the government does not agree that a sentence of probation provides adequate deterrence to criminal conduct by others. Because potential offenders may consider the chance of ever being caught to be very low, if they see that someone caught defrauding the Federal government, private lenders, and two individual victims, is not being imprisoned, but rather is only receiving probation and being ordered to pay the money back, it will send the wrong message to those individuals who might be tempted to abuse government relief programs or otherwise commit fraud.

In contrast, the government believes that a short term of incarceration, followed by three years of supervised release including conditions such as home confinement, mental health and substance abuse treatment and community service, along with restitution, strikes a fair balance that sends a strong message of deterrence to others tempted by the lure of easy money but also fits within the mandate of imposing punishment that is sufficient but not greater than necessary to satisfy the proper purposes of sentencing as it relates to this particular defendant.

In his Memorandum, the defendant also describes his addiction to painkillers as a mitigating factor. DE 22 at 5-6. While the government agrees that the defendant should receive treatment as part of his sentence, that treatment can and should begin with the Bureau of Prisons during his low-end period of incarceration, in a more controlled environment than merely being on probation. After that very controlled start, the defendant's treatment can and should continue as a condition of his term of supervised release.

The defendant's Memorandum also raises the issue of overcrowding and staff shortages at BOP facilities within the ambit of § 3553(a)(2)(D) as a reason to not impose a sentence of incarceration. DE 22 at 8-10. In particular, he cites to claims of overcrowding at FDC-Miami due to the housing of ICE detainees. Even accepting these claims as accurate, they should not override the need for the sentence to be sufficient to serve the purposes of sentencing, which in the government's view requires a short period of incarceration to properly punish the defendant for his criminal conduct.

Section 3553(a)(3), (a)(4), (a)(5)

These subsections of §3553(a) require consideration of the types of sentences available, the advisory Guidelines sentencing range, and any relevant policy statements in determining the final sentence. Here, both parties' recommendations are within the range of acceptable sentence for a defendant in Zone B who earns the Zero-Point

Offender reduction.

Section 3553(a)(6)

This sub-section focuses on avoiding unwarranted sentencing disparity. In support of his request, the defendant cites the cases of fourteen Broward Sheriff's Office deputies and detention deputies who pled guilty to PPP and/or EIDL fraud charges ("the BSO Cases"), all of whom received sentences of probation, as support for his claim that a sentence of probation is sufficient punishment and consistent with the sentences imposed on other law enforcement officers committing wire fraud. DE 22 at 6-8. However, the defendant's argument overlooks the fact that those fourteen defendants limited their criminal activity to fraudulently obtaining EIDLs and/or PPP loans, whereas the defendant here not only fraudulently obtained two PPP loans and one EIDL during 2020 and 2021, but also participated in two account takeover schemes in 2023 that stole money from the bank accounts of innocent victims who were complete strangers.

This is a key distinction that diminishes the comparison value of the BSO Cases. The wider scope of the defendant's fraudulent conduct, both in terms of the type of fraudulent activity (individual account takeovers in addition to EIDL and PPP fraud) and the nature of the victims (individuals along with PPP lenders and the Federal government), as well as the extended time frame, show that it was more serious than the narrower COVID-19 relief fraud engaged in by the fourteen BSO deputies in the cases cited by the defendant.

In fact, treating this defendant like those in the BSO Cases would actually create an unwarranted sentencing disparity in this defendant's favor since his criminal conduct was more serious than theirs. As such, the government believes that this factor supports the government's position that the defendant's conduct requires a low-end sentence that includes a short period of incarceration, and not merely probation.

Section 3553(a)(7)

This sub-section addresses the issue of restitution. The defendant acknowledged his mandatory restitution obligation in the plea agreement. DE 14 at ¶ 9. As such, including this restitution obligation in the sentence imposed will satisfy the important purpose of sentencing.

WHEREFORE, the government respectfully requests that this Court impose the following sentence at the low end of the advisory Guidelines range: two (2) months of imprisonment to be followed by a three-year term of supervised release with conditions including two (2) months of home confinement, mental health and substance abuse treatment as directed by the BOP and United States Probation Office, 300 hours of community service, and payment of full restitution, forfeiture, and a $100 special assessment.

Respectfully submitted,

HAYDEN P. O'BYRNE
UNITED STATES ATTORNEY

By: s/*Edward N. Stamm*
Edward N. Stamm (FL Bar #373826)
Assistant United States Attorney
U.S. Attorney's Office - SDFL
99 Northeast Fourth Street, 8th Floor
Miami, Florida 33132-2111
Telephone: (305) 961-9164
E-mail: edward.stamm@usdoj.gov