

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO.: 22-CR-80157-Singhal

UNITED STATES OF AMERICA,

Plaintiff,

vs.

DEREK JAMES ACREE,

Defendant.

OBJECTION TO PRESENTENCE INVESTIGATION REPORT

COMES NOW, the Defendant, **DEREK JAMES ACREE**, by and through his undersigned counsel, and hereby respectfully submits his objection to the Presentence Investigation Report (“PSR”). As grounds, Mr. Acree respectfully submits that the loss amount contained in paragraph 45 of the PSR and 16-level increase, should be reduced by 2 levels to a 14-level increase.¹ In support, Mr. Acree contends that the loss amount in the PSR is calculated based on the intended loss under the Larceny, Embezzlement, and Theft guideline, and that recent caselaw supports the position that the loss is more properly calculated based on actual loss, not intended law, thereby justifying the 2-level increase from level-16 to level-14 under §2B1.1(b)(1) .

¹ §2B1.1(b)(1)(H) provides for a 14-level increase where the loss amount is more than \$550,000.

In *United States v Banks*, Nos. 19-3812 & 20-2235 (3rd Cir. 2022), the Court held that loss enhancements in the Sentencing Guidelines commentary “impermissibly expands the word ‘loss’, to include both intended and actual loss.”. Although not binding on this Court, it is noteworthy that the Eleventh Circuit recently heard oral argument in an *en banc* case raising a similar argument regarding the career offender guideline’s definition of a controlled substance offense and the commentary’s expansion of that definition to include inchoate offenses. See *United States v. Dupree*, No. 19-13776 (2/18/2022). Thus, the holding in *Banks*, *supra* may potentially be binding in this Circuit.

Mr. Acree readily acknowledges that the 16-level increase was agreed to in the plea agreement. However, given the recent change in the law, that came out on November 30, 2022 which was after the plea agreement was entered, Mr. Acree respectfully urges this Honorable Court to consider the reasoning articulated by the Third Circuit to justify reducing the loss amount to reflect the actual loss, and not the intended loss, and the impact the 2-level reduction has on the Total Offense Level of 22 as contained in paragraph 54 of the PSI.²

WHEREFORE, Defendant, **DEREK JAMES ACREE**, respectfully submits his Objection to the 16-level increase contained in paragraph 45 of the PSR

² Paragraph 41 of the PSR specifically states that the loan funds disbursed by Flagler Bank in the amount of \$349,955 were returned to the bank on July 29, 2020. Thus, the actual loss amount is \$1,262,600.

and respectfully requests that a 14-level increase is appropriate reflecting the actual loss in this matter.

I HEREBY CERTIFY that on December 13, 2022, I electronically filed the foregoing document with the Clerk of Court using CM/ECF. I also certify that the foregoing document is being served this day on all counsel of record.

Respectfully submitted,

/s/ Christopher Haddad
CHRISTOPHER HADDAD, ESQ.
Under Florida Bar No. 879592
Attorney for Derek James Acree
319 Clematis Street, Ste. 812
West Palm Beach, FL 33405
Telephone: 561-832-1162
chris@chrishaddad.com