UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 23-CR-80154-DMM

UNITED STATES OF AMERICA

vs.

GREGORY SCOTT KEOUGH,

Defendant.

GOVERNMENT'S RESPONSE IN OPPOSITION TO DEFENDANT'S SENTENCING MEMORANDUM SEEKING A DOWNWARD VARIANCE

The United States, by and through the undersigned Assistant United States Attorney, hereby files its response in opposition to defendant Gregory Scott Keough's (the "Defendant" or "Keough") sentencing memorandum requesting the Court grant a downward variance and impose a sentence of "no prison time." (DE 56:3). In support of his request, the Defendant urges the Court to consider his lack of criminal history, cooperation with the government, acceptance of responsibility, prior good works for the United States, charitable efforts, and restitution repayment. *Id*. Defense's requested sentence would be woefully inconsistent with and would not reflect the serious of the offense of conviction, the related bankruptcy proceedings in case matter *Deborah C. Menotte v. Gregory Keough, Derek Acree, NFH Arizona, LLC, NFH Florida, LLC, Finova Financial, LLC, NFH Partners, LLC, and NFH Investments, LLC*, 22-CV-01243-MAM) (the "Bankruptcy proceeding"), and the defendant's conduct and role with DeFi Money Market, which led to a settlement agreement with the United States Securities and Exchange Commission (the "Commission"). The United States submits that the Defendant's conduct does not warrant a downward variance and this Court should reject his request for a downward variance and impose a term of imprisonment of 37 months, which is within and at the high end of the applicable Sentencing Guideline range.

The undersigned Assistant United States Attorney opposes a variance of the advisory applicable guideline range and notes that the related co-defendant, Derek Acree, convicted of conspiracy to commit wire fraud and whose conduct is described in the Offense Conduct Section of the Presentence Investigation Report ("PSR," as revised on February 1, 2024), was sentenced to 41 months' imprisonment for his role in the scheme. (PSR, ¶¶ 4, 5-46). A sentence which varies from the advisory applicable guideline range would be disparate to similarly situated defendants. The United States state as follows:

BACKGROUND

The United States, by and through the Assistant United States Attorney, adopts by reference the Offense Conduct Section in the PSR.

ARGUMENT

Following the Supreme Court's decision in *United States v. Booker*, 543 U.S. 330, 125 S.Ct. 738, 160 L.Ed.2d 621 (2005), courts review a defendant's sentence for reasonableness. *See United States v. Winingear,* 422 F.3d 1241, 1245 (11th Cir.2005). After *Booker*, a district court, in determining a reasonable sentence, must correctly calculate the advisory guidelines range and then consider the factors set forth in 18 U.S.C. § 3553(a). *United States v. Talley*, 431 F.3d 784, 786 (11th Cir.2005); *Winnegar*, 422 F.3d at 1246. The factors set forth in § 3553(a) serve as a guide in this review. *Id*. at 1246. Those factors include: (1) the nature and circumstances of the offense; (2) the history and characteristics of the defendant; (3) the need for the sentence imposed to reflect the seriousness of the offense, to promote respect for the law, and to provide just punishment; (4) the need to protect the public; and (5) the guideline range. See 18 U.S.C. § 3553(a).

Post *Booker* precedents emphasize that district courts must correctly calculate the advisory guideline range before granting a variance, *see United States v. Crawford*, 407 F.3d 1174, 1178 1179 (11th Cir. 2005). The government notes that the Defendant terms his request for a sentence less than the applicable guideline sentence as a variance, pursuant to § 3553(a) rather than a departure. *See United States v. Scott*, 426 F.3d 1324 (11th Cir. 2005) (distinguishing between departures from the guideline range and variances pursuant to the § 3553(a) factors). Under the Sentencing Guidelines, the factors urged by defense are not "ordinarily relevant" and are discouraged grounds for departures. *See* Chapter Five, Part H.

A variance is a sentence outside the applicable advisory guideline range that is imposed after such range, including any departures, has been correctly calculated. *See United States v. Irizarry*, 458 F.3d 1208, 1211-12 (11th Cir. 2006). A district court may only depart or vary from the Sentencing Guidelines when there is an "aggravating or mitigating circumstance of a kind, or to a degree, not adequately taken into consideration by the Sentencing Commission in formulating the guidelines." 18 U.S.C. § 3553(b). When making this determination, the court may "consider only the sentencing guidelines, policy statements, and official commentary of the Sentencing Commission." *Id*. The Probation officer, in completing a thorough and comprehensive PSR, noted no aggravating or mitigating factors warranting a variance. (PSR, ¶ 123). As previously stated, the Defendant maintains that he is entitled to a downward variance due to his lack of prior criminal history, prior works on behalf of the United States, claimed low risk of recidivism, Post Traumatic Stress Disorder ("PTSD"), and charitable efforts in Belle Glade and in El Salvador. (DE 56).

A. *Nature and Circumstances of the offense*:

First, the Defendant's sentencing memorandum is devoid of any meaningful discussion about the first §3553 factor the Court should consider, that is, the nature and circumstances of the offense. Pursuant to §1B1.3, the Defendant is responsible for "all acts and omissions committed, aided, abetted, counseled, commanded, induced, procured, or willfully caused by the defendant." USSG §1B1.3(a)(1). As such, the focus of his offense conduct is not limited to the offenses of conviction. The investigation revealed that the Defendant's offense conduct began as early as in and around March 2020, wherein, he submitted materially false Economic Injury Disaster Loan applications and caused the submission of false Payment Protection Program loan applications. PSR, ¶¶ 22-36, 39-43, and 45. The Defendant personally benefited from the proceeds of these false applications and consumed much of the proceeds on himself, his home and his family. PSR, ¶¶ 37-38, and 46.

The Defendant's conduct resulted in an intended loss of approximately $2,049,105 and an actual loss of $1,922,355. PSR, ¶ 47. Under the Sentencing Guidelines' approach to economic crime, the amount of financial loss attributable to a defendant's crime serves as a proxy for "the seriousness of the offense and the defendant's relative culpability." USSG § 2B1.1 *cmt. background*. The Defendant's position in seeking a downward variance consciously overlooks the real casualty that resulted from his actions, that is, the grave harm he brought to national government programs which are dedicated to providing services to all small business who were eligible for relief.

B. History and Characteristics of the Defendant

Second, although the Defendant has no prior criminal history, the Defendant is not without exposure to law enforcement. And although such exposure did not rise to the level of a criminal proceeding it is still significant and noteworthy. *See generally*, PSR, ¶ 95. In August 2021, the Commission charged Gregory Keough, Derek Acree, and their company Blockchain Credit Partners (their Cayman Islands company) for unregistered sales of more than $30 million of securities using smart contracts and so-called "decentralized finance" (DeFi) technology, and for misleading investors concerning the operations and profitability of their business DeFi Money Market.

The Defendant and the other respondents offered and sold securities in unregistered offerings through DeFi Money Market from February 2020 to February 2021, in that, they misrepresented how the company was operated, failed to notify the investors of material facts, and falsely claimed that DeFi Money Market had bought car loans that they displayed on DeFi Money Market's website when in fact they did not.

The Commission ordered the Defendant and the other Respondents to pay $12,849,354.00 in disgorgement, $258,052.00 in prejudgment interest, and $250,000.00 in civil money penalties, for a total of $13,357,406.00, to the Commission. An Agreement was later reached between the Commission and the Respondents whereby the Respondents were jointly and severally liable for a debt of $7,320,960 in disgorgement and $258,052 in prejudgment interest, which has been paid in full.

With regard to Defendant Keough he had an individual debt of $2,263,156 in disgorgement and a $125,000 civil penalty. Keough paid $2,415,619.79 on 3/31/23 after the sale of his real estate properties.

In addition, the Defendant and Acree were parties in a Bankruptcy proceeding involving several entities on whose behalf false CARES Act loan applications were submitted and funded. (PSR, ¶ 97).

The Defendant's pattern of behavior demonstrates a disrespect and disregard for the law. Although the Defendant's offense of conviction is not be a crime of violence with impact upon an individual, the seriousness of his offense is of significance and has a cumulative national impact.

1. Cooperative

As a preliminary matter, in regard the defense's proffered statement that the Keough was "cooperative" with law enforcement, quite frankly the government is unclear as to defense's meaning of "cooperative." It is the government's position, that the Defendant was less than cooperative. During the course of the investigation, Keough became aware of the investigation and, in *June 2022*, fled the United States to El Salvador and his family followed shortly thereafter.[1] Keough liquidated his assets – selling his primary residence in Palm Beach and a residence in Montana. Keough possessed both a U.S. and Irish passport and during the one-year period while he was outside the United States he traveled on his Irish passport.

2. Prior Employment with the Government

The Defendant was employed with an Intelligence governmental agency for 3 years - from 1989 to 1992. The undersigned Assistant United States Attorney commends the Defendant for his then commitment to the United States and for his acts which earned him the Intelligence Star. Notably, saving the life of another is certainly meritorious and honorable. However, in maintaining perspective, the event which earned him this award occurred over 30 years ago. After the Defendant departed government service, his career took a completely different trajectory. A trajectory which now lands him before this Court for his misrepresentations, misdeeds, and unlawful conduct. Are such acts to be held in perpetuity and benefit a defendant regardless of the passage of time and the Defendant's pattern of behavior and offense conduct? The undersign urges this Court to reject the Defendant's argument. There simply is no justification for such a benefit.

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[1] After a protracted detention hearing over a 3-day period, U.S. Magistrate Judge William Matthewman found that the defendant was a risk of flight, however, entered a bond as outlined in the PSR at p. 3).

3. Charitable Works and Repayment of Restitution

Defense makes a casual reference to the Defendant's charitable works in Belle Glades and El Salvador but provides no detail upon which the Court can rely. The government would respectfully request that the Court reject this proffered statement as it provides no support to assess whether such charitable work is exceptional.

The government thanks the Defendant (and defendant Acree) for their efforts in repaying Restitution, however, repayment of restitution, which is mandatory, does not rise to level warranting a variance.

4. Physician and Mental Health

According to the material provided to Probation, the Defendant suffers/suffered from (1) "moderate severe hearing loss," and wears hearing aids as an accommodation; (2) neuropsychiatric symptoms and pulmonary complications due to COVID-19 illness, from which the Defendant reports he has recovered; (3) taking medication for hypertension (not prescribed by a U.S. medical doctor); and chronic pain in lower back, hip and leg, which probation reflects is treatable as recommended by the Defendant's chiropractor, Dr. Laurich. (PSR, ¶¶ 82-84, 87). Defense reports that Keough suffers from PTSD, however, when offered an opportunity to confer and speak with a mental health professional, the Defendant himself rejected it and indicated that he did not feel the need to speak with such professional. (DE 56:3, PSR, ¶ 87). In connection with all of the cited maladies, the Bureau of Prisons is equipped to provide adequate medical care to the Defendant.

5. Recidivism and Deterrence

Much has been written as to whether incarceration acts as a deterrent to white collar crime offenders and whether white collar crime offenders are likely to re-offend. In an article written by D. Weisburd, E. Waring and others, and published in the Department of Justice Office of Justice

Programs in 1993, the authors discussed a study which looked at the criminal careers of almost 1,000 offenders convicted of white-collar crimes in U.S. District Courts. The study found that "those convicted of white-collar crimes are often repeat offenders." *See* https://www.ojp.gov/ncjrs/virtual-library/abstracts/white-collar-crime-and-criminal-careers. The government submits that recidivism is high in white collar offenders due in part to leniency in sentencing and punishment of white-collar criminals. It is the general lack of severity of the punishment for white collar offenders that impacts deterrence and lead to higher recidivism.

Defendant Keough is exposed to a sentencing range of 30-37 months' imprisonment. In view of the applicable sentencing principles, a sentence within and at the high end of the applicable sentencing guidelines range is reasonable, taking into account the Defendant's offense conduct, his personal history and circumstances, just punishment, and adequate deterrence. As the *Booker* Court noted, "[t]he district courts, while not bound to apply the Guidelines, must consult those Guidelines and take them into account when sentencing." *Booker*, 125 S.Ct. at 767. A sentence within the Guidelines range would satisfy one of the explicit § 3553(a) factors. *See* 18 U.S.C. § 3553(a)(4).

The undersigned Assistant United States Attorney urges this Court to send a strong, clear message to the public that such a violation of the collective trust cannot and will not be tolerated. In this case, such a message is all the more required given the breadth of Keough's offense conduct. In light of the nature of Defendant's fraudulent conduct, a reduced sentence, as advocated by defense counsel, would absolve defendant of his egregious conduct and provide little deterrent to like-minded offenders. The need for the sentence imposed to reflect the seriousness of the offense, to promote respect for the law, and to provide just punishment cries out for a sentence commensurate with that advised by the Sentencing Guidelines. These factors are unquestionably legitimate and serve as a reasonable basis upon which to not vary downward from the advisory guideline range.

In sum, the record reveals that the fraud committed by Keough was not a spur-of-the-moment decision, but a premeditated course of conduct that caused significant harm. The government respectfully request that rather than probation, the Court impose a sentence of imprisonment at the high end of the guideline range, which is necessary to reflect the seriousness of the offense, provide adequate deterrence, and would be in keeping with the sentence imposed on related defendant Derek Acree, thereby avoiding unwarranted disparities among defendants with similar records and found guilty of similar offenses.

There is nothing offered to the Court to indicate that the range of sentence prescribed under the Sentencing Guidelines is unreasonable in light of the § 3553(a) factors, and Defendant's request for a below guidelines sentence should be rejected.

CONCLUSION

WHEREFORE, based on the foregoing, the United States respectfully requests that the Court deny the Defendant's request for downward variance.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on February 7, 2024, I electronically filed the foregoing document with the Clerk of the Court using CM/ECF.

By: /s/ Robin Waugh
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Assistant United States Attorney