

**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 OBJECTIONS
TO THE PRESENTENCE INVESTIGATION REPORT**

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”) objection to the Presentence Investigation Report (“PSR”). seeking to strike certain portions of the PSR (DE 34). The Government submits, Defense’s argument that Probation’s reference to the “NFH Bankruptcy,” which Keough claims “has no relevancy to the charges” and thus, should be stricken, is meritless. (DE 51). The information the Defendant seeks to strike goes to the “background and character” of the Defendant, is not prohibited, and may be included in the PSR which can be considered by the Court, pursuant to 18 U.S.C. §§ 3553 and 3661. The Government states as follows:

I. BACKGROUND

On August 24, 2023, a federal grand jury in the Southern District of Florida returned an Indictment, which charged the Defendant with one count of conspiracy to commit wire fraud, in violation of Title 18, United States Code, Section 1349 (Count 1), six counts of wire fraud, in violation of Title 18, United States Code, Section 1343 (Counts 2-7), and four counts of engaging in monetary transactions in criminally derived property, in violation of in violation of Title 18, United States Code, Section 1957 (Counts 8-11) (DE 17). Without the benefit of a written plea

agreement, on November 13, 2023, the Defendant entered an open plea to Counts 4-5 and 8 of the charged Indictment (DE 43). The Defendant's sentencing hearing is scheduled for February 8, 2024 (DE 44).

II. ANALYSIS

A. Keough's Request to Strike Probation's recitation outlined in the Other Conduct Section of the PSR should be Denied

In anticipation of sentencing, Keough objects to and seeks to strike paragraph 34 of the PSR. The Defendant makes no claim as to any inaccuracies in paragraph 34 of the PSR, but only makes a conclusory statement that the reference to the National Financial Holdings Inc.'s bankruptcy proceeding is irrelevant to the charges. The government submits that the PSR's reference to the National Financial Holding Inc bankruptcy proceeding is relevant as it involves the same entity named in the charged Indictment. Further, although the bankruptcy proceeding is pending, the filed complaint contemplates misrepresentations made by the officers of National Financial Holding Inc.

Defense make no challenge to the facts in paragraph 34, however, even where a factual challenge is made, it must be made with "specificity and clarity." *United States v. Funez*, 755 F. Appx 871, 873 (11th Cir. 2018) (*citation omitted*). Even "[v]ague assertions of inaccuracies are not sufficient to raise a factual dispute." *Id.* (quoting *United States v. Aleman*, 832 F.2d 142, 145 (11th Cir. 1987)). If a defendant fails to properly object, the objection is waived, and the burden does not shift to the Government to prove the disputed facts. *Id.* Relevant conduct always includes acts the Defendant counseled, commanded, induced, procured, or willfully caused. U.S.S.G. § 1B1.4 states that "[i]n determining the sentence to impose within the guideline range, or whether a departure from the guidelines is warranted, the court may consider, *without limitation*, any information concerning the background, character and conduct of the defendant, unless

otherwise prohibited by law.” U.S.S.G. § 1B1.4 (*emphasis added*); *see also United States v. Sikes*, 824 Fed. Appx. 805, 809-10 (11th Cir. 2020); 18 U.S.C. § 3661.¹ The Commentary Application Notes to 1B1.4 state the following:

A court is not precluded from considering information that the guidelines do not take into account in determining a sentence within the guideline range or from considering that information in determining whether and to what extent to depart from the guidelines.

In *United States v. Watts*, 519 U.S. 148 (1997), the Supreme Court explained that a sentencing court may rely on uncharged and acquitted conduct that has been proven by a preponderance of the evidence, noting that the consideration of such conduct is consistent with the Double Jeopardy and Due Process Clauses. *See id.* at 151-57. Later, in *United States v. Belfast*, 611 F.3d 783 (11th Cir. 2010), the Eleventh Circuit held that there was no constitutional violation where the district court sentenced the defendant based on uncharged conduct because the defendant’s ultimate sentence was below the applicable statutory maximum sentence. *Id.* at 800-01, 827-28. In this case, the information described in the Other Conduct Section of the PSR, to which the Defendant objects, does not alter the applicable advisory guideline range as the Government is not seeking an upward variance, nor is it prejudicial to the Defendant given the Defendant’s criminal history. The information goes to the “background and character” of the Defendant, which can be considered by the Court. 18 U.S.C. §§ 3553 and 3661.

Federal Rule of Criminal Procedure 32, which provides for post-conviction procedures, does not compel exclusion of the PSR paragraphs and does not require a court to strike controverted material not considered in sentencing. The contents and substance of a PSR is

¹ Title 18, United States Code, Section 3661 states the following: “No limitation shall be placed on the information concerning the background, character, and conduct of a person convicted of an offense which a court of the United States may receive and consider for the purpose of imposing an appropriate sentence.” 18 USC § 3661.

confidential. Only with a court order may a PSR be seen by anyone except the court, counsel, or defendant. See *United States v. Bartlett*, 416 F. Appx 508, 510 (6th Cir. 2011) (finding no violation of Rule 32 where the district court refused to strike sexual-abuse allegations and instead indicated it did not resolve their truth).

In addition, a court's compliance with Rule 32 sufficiently alleviates any concern that others will rely on the unproven allegations. Rule 32(d)(3) excludes from a PSR, which may be relevant here, "(A) any diagnoses that, if disclosed, might seriously disrupt a rehabilitation program; and (C) any other information that, if disclosed, might result in physical or other harm to the defendant or others." FRCP Rule 32(d)(3); See *United States v. Hopkins*, 824 F.3d 726, 735 (8th Cir. 2016) (holding concerns that prison officials will rely on unfounded, detrimental PSR information are "met by a district court's compliance with Rule [32(i)(3)(B)]").

WHEREFORE, for the foregoing reasons, the Government respectfully opposes the Defendant's objection to paragraph 34 of the PSR.

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 W. Waugh
ROBIN W. WAUGH
ASSISTANT UNITED STATES ATTORNEY