IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

UNITED STATES OF AMERICA *v.* ANTONIO D. HOSEY	Criminal Action No. 1:20-CR-396-LMM

The Government's Sentencing Memorandum

The United States of America, by Ryan K. Buchanan, United States Attorney, and Diane C. Schulman, Special Assistant United States Attorney for the Northern District of Georgia, files this Sentencing Memorandum.

1. Background

On or about November 19, 2020, Defendant was charged in a criminal information with one count conspiracy to commit wire fraud in violation of Title 18 U.S.C. § 371. (Doc 1). These charges arose from Defendant's role in a PPP fraud scheme that defrauded two banks out of a combined $3,000,000.

The scheme involved 10 business owners who obtained $300,000 PPP loans by submitting applications that contained fraudulent information and attachments. Each business owner submitted the loan documents with the help of R.T., the ringleader of the scheme. Once the business owners obtained the loan, they were required to pay R.T. approximately 50 percent of the loan.

Defendant was involved in the scheme in several crucial ways. He knew R.T., the ringleader, from years earlier when R.T. ran a questionable "credit repair" service. When R.T. got involved in the PPP fraud scheme, he needed to find small business owners who had business bank accounts to participate in the scheme. He reached out to Defendant because of their prior relationship. Because Defendant did not have a business bank account, he referred T.W. to R.T. R.T. paid Defendant a $10,000 referral fee. T.W. was able to get a $300,000 PPP loan and he referred 3 other business owners. Those business owners obtained 4 PPP loans, each for $300,000.

R.T. then asked Defendant to help him launder the funds. In order to receive 50 percent of each loan he helped a business owner obtain, R.T. needed individuals who could cash checks from the business owners. He asked Defendant to recruit check cashers. Defendant recruited approximately 12 individuals to cash checks. He brought the check cashers to the bank to cash the checks. Typically, each check was for $8,333.33. Defendant let the check cashers keep $500 from each check and he collected the remainder of the cash. According to R.T., Defendant was also instructed to keep $500 per check for himself. Defendant delivered the remaining cash in bags to R.T. Defendant received approximately $32,000 for his role.

On November 19, 2020, Defendant pleaded guilty to the criminal information pursuant to a negotiated plea. (Doc. 8). At the sentencing hearing, the Government will object to the loss amount and seek two-level downward variance for Defendant's cooperation. The Government will then ask for a sentence at the low-end of the guideline range.

II. The appropriate loss amount is more than $550,000 and less than $1,500,000.

In determining the appropriate enhancement for loss, the PSR added a 12-level enhancement consistent with a loss amount of more than $250,000 and less than $550,000. This enhancement was based on a finding that the appropriate loss was $463,779.79, which represents that amount of checks Defendant and his check cashers cashed in connection with the overall scheme. But this amount overlooks the $300,000 loan obtained by T.W. who Defendant referred to R.T.

Defendant is charged with participating in a criminal conspiracy. His participation started when he referred T.W. to R.T. and continued while he oversaw the check cashers for multiple business owners. Defendant's check cashers cashed multiple checks for the following businesses: Rare Breed Nation, Faithful Transport, the Infinity Group, KMJ Transport, and Market Yourself. One of his check cashers cashed one $7,945.21 check for Bamigi Brand, T.W.'s company. The total amount of the checks that Defendant's check cashers cashed was $463,777.79.

The Government argues that the appropriate loss attributed to Defendant is $755,832.58.[1] The Guidelines define relevant conduct as "jointly undertaken criminal activity…that [was] within the scope of the jointly undertaken criminal activity, in furtherance of that criminal activity, and reasonably foreseeable in

[1] This amount represents the total amount of checks Defendant and his check cashers cashed plus the loan T.W. received. Because the checks cashed included a $7,945.21 check from Bamigi Brand, the Government deducted this amount from the T.W. loan so as to not double count.

connection with that criminal activity. *See* U.S.S.G. § 1B1.1(a)(1)(B). The appropriate inquiry is not whether Defendant was actually involved the submission of the fraudulent PPP loan application for Bamigi Brand or whether he had actual knowledge of the submission of the fraudulent loan, the appropriate inquiry is whether the submission of the fraudulent loan was reasonably foreseeable consequence of Defendant's referral. *See United States v. Danzey*, 842 F. App'x 413, 471 (11th Cir. 2021). The Court should answer that question in the affirmative.

Defendant referred T.W. to R.T. after R.T. explained to Defendant that he was looking for small business owners who had business bank accounts to assist in getting PPP loans. R.T. paid Defendant $10,000 as a referral fee. It was reasonably foreseeable that T.W. would obtain a fraudulent loan as result of Defendant's referral. In fact, without Defendant's referral, T.W. would never have been in position to obtain the loan. Finally, including the loan T.W. received as part of Defendant's loss amount is consistent with how the Government has treated other defendants involved in the same scheme.

II. **Defendant provided substantial assistance worthy of a two-level downward variance.**

Section 5K1.1 allows the court to depart from the guidelines "upon a motion from the Government stating that the defendant has provided substantial assistance in the investigation and prosecution of another person who has committed an offense." *See* U.S.S.G. § 5K1.1. In determining the appropriate departure, the Court should consider the significance and usefulness of the defendant's assistance; the truthfulness, completeness and reliability of the information Defendant provided; the nature and extent of the defendant's assistance; any injury suffered or danger or risk to the defendant; and the timeliness of Defendant's assistance.

Defendant provided critical information about how the scheme worked. He also truthfully testified at trial against T.C. Because of his testimony, the Government secured a conviction against T.C. The information Defendant provided to the Government was truthful, complete and reliable. In fact, the evidence as well as statements from R.T. corroborated Defendant's information. Defendant immediately accepted responsibility for his conduct and quickly agreed to assist the Government in the investigation and prosecution. These factors weigh in favor of granting Defendant a two-level reduction in his sentence for substantial assistance.

II. A Guidelines Sentence is Appropriate Given the Section 3553(a) Factors.

1. **The Nature and Circumstances of the Offense.**

Defendant's offense was serious, motivated by personal greed during an unprecedented global crisis. In early 2020, the COVID-19 pandemic necessitated nationwide lockdowns that ground the economy to a halt, sending stock markets crashing and unemployment rates skyrocketing. Many American businesses—particularly small businesses—struggled to stay afloat as consumer demand plummeted and in-person services abruptly ceased. Employees relying on these paychecks to support their families faced unprecedented uncertainty. In response, Congress passed the Paycheck Protection Program (the "PPP") as one of the mechanisms to provide relief to small businesses and their employees. To obtain a PPP loan, a business had to certify that the loan would be used to pay for payroll, lease or mortgage interest, or utilities, and the loan was forgivable if the business spent a certain percentage of the loan on payroll costs.

Because Congress' intent was to "provide relief to America's small businesses expeditiously," the PPP streamlined the Small Business Administration's typical lending requirements. *Businesses Loan Program Temporary Changes*; *Paycheck Protection Program*, 85 Fed. Reg. 20811-01 (Apr. 15, 2020). For example, the PPP "allow[ed] lenders to rely on certifications of the borrower in order to determine eligibility of the borrower and use of loan proceeds and to rely on specified documents provided by the borrower to determine qualifying loan amount and eligibility for loan forgiveness." *Id*. These procedures were designed to *rapidly* provide desperately needed funds to small businesses so they could keep their workers employed during an economic and public health emergency that threatened the viability of these businesses, and their ability to pay employees. Thus, the program dispensed with some of the usual checks on the applicant and depended on the applicants' honesty.

2. **The History and Characteristics of the Defendant.**

The Government believes that a sentence at the low end of the guidelines range fairly reflects Defendant's history and characteristics. Defendant has no past arrests and no criminal history points. These factors weigh in Defendant's favor. However, Defendant is before the Court to be sentenced for the criminal conduct he did engage in. Defendant made the decision to get involved in this criminal conduct so that he could line his own pockets. The Government has recommended a downward departure to reward Defendant for his quick readiness to provide substantial assistance. After accounting for that assistance, Defendant needs to be held accountable for the criminal conduct that got him here. Defendant's conduct warrants a low-end guideline sentence.

Defendant recruited 12 people to help him commit money laundering. These check cashers were individuals who trusted Defendant and desperately needed money. Defendant betrayed those individuals by getting them involved in criminal conduct. He also referred T.W. into the bank fraud scheme for which T.W. now has a felony conviction. Defendant's conduct deserves a custodial sentence at the low-end of the adjusted guideline range.

3. **The Need for Adequate Deterrence**.

A sentence within the guidelines range is necessary to afford adequate deterrence and to reflect the seriousness of the offense, promote respect for the law, and provide just punishment for the offense. 18 U.S.C. § 3553(a)(2).

The Eleventh Circuit has identified general deterrence as "an important goal of sentencing in a white-collar crime prosecution." *United States v. Kuhlman*, 711 F.3d 1321, 1328 (11th Cir. 2013); *see also United States v. Livesay*, 587 F.3d 1274, 1279 (11th Cir. 2009) ("[T]he threat of spending time on probation simply does not, and cannot, provide the same level of deterrence as can the threat of incarceration in a federal penitentiary for a meaningful period of time."); *United States v. McQueen*, 727 F.3d 1144, 1158 (11th Cir. 2013) (recognizing that general deterrence is one of the "key purposes of sentencing'") (citation omitted).

As the Eleventh Circuit has recognized, deterrence is especially important in the context of crimes, like the Defendant's crime in this case, that "may easily go undetected and unpublished." *See id*. at 1158-59 (reversing the district court's lenient sentence because it "sap[ped] the goal of general deterrence"); *see also United States v. Engle*, 592 F.3d 495, 502 (4th Cir. 2010) (explaining that because tax evasion offenses are infrequently prosecuted, "[w]ithout a real possibility of imprisonment, there would be little incentive for a wavering would-be evader to choose the straight-and-narrow over the wayward path); *United States v. Heffernan*, 43 F.3d 1144, 1149 (7th Cir. 1994) ("Considerations of (general) deterrence argue for punishing more heavily those offenses that either are lucrative or are difficult to detect and punish, since both attributes go to increase the expected benefits of a crime and hence the punishment required to deter it.").

A recent analysis found that approximately 12.3% of the PPP loans granted to small businesses, totaling $64.2 billion, have at least one indicator of potential fraud. *See* John M. Griffin et al., Did FinTech Lenders Facilitate PPP Fraud? (May 4, 2022), available online at https://ssrn.com/abstract=3906395 (last visited Aug. 4, 2022). And because of the sheer number of PPP loans as well as the streamlined documentation necessary to obtain them, the United States is unlikely to detect and/or to prosecute most individuals who obtained fraudulent PPP loans. The need for general deterrence is therefore significant in this case.

4. **The Sentencing Commission's Policy Statement**.

"In deciding a sentence, district courts should consider the policies behind the applicable guidelines provision." *United States v. Crisp*, 454 F.3d 1285, 1291 (11th

Cir. 2006); *see also* 18 U.S.C. § 3553(a)(5) (directing district courts to consider the Sentencing Commission's policy statements). For fraud-related offenses, the Sentencing Commission has explained that "along with other relevant factors under the guidelines, loss serves as a measure of the seriousness of the offense and the defendant's relative culpability and is a principal factor in determining the offense level under [U.S.S.G. § 2B1.1]." U.S.S.G. § 2B1.1, cmt. backg'd.

The Sentencing Commission's policy statement supports imposing a Guidelines sentence in this case, where Defendant's Guidelines are based almost entirely on the amount of loss attributable to his offense.

IV. **Conclusion**

For the reasons stated above and at sentencing, the United States respectfully requests that the Court impose a sentence at the low end of the applicable Guidelines range. Considering the 3553a factors, a low-end guideline sentence is appropriate. Defendant's conduct warrants a custodial sentence because of the nature and circumstance of the offense. Defendant's crime is an egregious fraud case. During a pandemic, Defendant stole money intended for legitimate businesses struggling to survive in the midst of the public health emergency. The PPP was a much-needed lifesaver for legitimate businesses throughout the country. Defendant put his own self-interest above the needs of the public.

Respectfully submitted,

RYAN K. BUCHANAN
United States Attorney

/s/DIANE C. SCHULMAN
Special Assistant United States Attorney
Georgia Bar No. 497764
Diane.schulman@usdoj.gov

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Caitlyn Wade

November 1, 2022

/s/ DIANE C. SCHULMAN

DIANE C. SCHULMAN
Special Assistant United States Attorney