U.S. Department of Justice

United States Attorney
Southern District of New York

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October 6, 2021

BY ECF

Honorable Lewis J. Liman
United States District Judge
Southern District of New York
500 Pearl Street
New York, New York 10007

Re: *United States v. Adedayo Ilori*, No. 20 Cr. 378 (LJL)

Dear Judge Liman:

The defendant, Adedayo Ilori, is scheduled to be sentenced on October 13, 2021, at 2:00 p.m. The Government makes this submission in advance of sentencing. For the reasons set forth below, the Government submits that a sentence within the Guidelines range stipulated in the parties' plea agreement, namely 51 to 63 months' imprisonment, is appropriate in this case.

I. Offense Conduct

Between approximately March 2019 and 2020, Adedayo Ilori and Herode Chancy, a bank manager, conspired to submit fraudulent applications for business loans, and they submitted fabricated bank statements and stolen identities to apply for a total of $1,020,000 in loans that they intended not to repay (the "Loan Scheme"). (PSR ¶¶ 18-19). Toward the end of the scheme, Chancy coordinated with Ilori to obtain another stolen identity to open a bank account with the assistance of co-defendant Michael Albarella, another bank manager, in order to launder $200,000 of the fraudulent loan proceeds. Unbeknownst to Chancy and Ilori, the purportedly corrupt underwriter to whom they were submitting the loan applications was an undercover FBI agent, and the person they believed to be a third co-conspirator who worked in the financial industry was a confidential source (the "CS"). (PSR ¶¶ 17-18). Because the Court is familiar with the facts of the case, the Government refers the Court to the Presentence Report and the argument section below for a fulsome description of Ilori's role in the Loan Scheme.

II. Procedural History

On March 4, 2020, pursuant to a complaint in connection with the above offense, law enforcement arrested Ilori and his co-defendants. The Complaint charged Ilori with: one count of conspiracy to commit wire fraud, in violation of 18 U.S.C. § 1349; wire fraud, in violation of 18 U.S.C. § 1343; aggravated identity theft, in violation of 18 U.S.C. § 1028A(a)(1) and (b); and conspiracy to commit money laundering, in violation of 18 U.S.C. § 1956(h. On July 23, 2020, a grand jury returned an indictment charging Ilori with the same offenses as in the Complaint, as well as conspiracy to commit mail fraud, in violation of 18 U.S.C. § 1349, and mail fraud, in violation of 18 U.S.C. § 1341.

On April 8, 2021, Ilori pled guilty pursuant to a plea agreement to Count One of the Indictment, which charged Ilori with conspiracy to commit mail and wire fraud, and Ilori admitted to Count Five, which charged Ilori with conspiracy to commit money laundering. (PSR ¶ 11). Pursuant to the plea agreement dated January 25, 2021, the parties stipulated that the applicable Guidelines range is 51 to 63 months' imprisonment. On July 8, 2021, Probation issued the final Presentence Report. Probation calculated the defendant's Guidelines range to be 51 to 63 months' imprisonment. (PSR ¶ 104). Probation recommends a sentence of 51 months' imprisonment. (PSR at 32).

III. A Guidelines Sentence is Appropriate in This Case

A. Applicable Law

Although *United States v. Booker* held that the Guidelines are no longer mandatory, it also held that they remain in place and that district courts must "consult" the Guidelines and "take them into account" when sentencing. 543 U.S. 220, 264 (2005). As the Supreme Court stated, "a district court should begin all sentencing proceedings by correctly calculating the applicable Guidelines range," which "should be the starting point and the initial benchmark." *Gall v. United States*, 552 U.S. 38, 49 (2007).

After that calculation, a sentencing judge must consider seven factors outlined in Title 18, United States Code, Section 3553(a): (1) "the nature and circumstances of the offense and the history and characteristics of the defendant;" (2) the four legitimate purposes of sentencing, as set forth below; (3) "the kinds of sentences available;" (4) the Guidelines range itself; (5) any relevant policy statement by the Sentencing Commission; (6) "the need to avoid unwarranted sentence disparities among defendants;" and (7) "the need to provide restitution to any victims." 18 U.S.C. § 3553(a)(1)-(7); *see also Gall*, 552 U.S. at 50 & n.6.

In determining the appropriate sentence, the statute directs judges to "impose a sentence sufficient, but not greater than necessary, to comply with the purposes" of sentencing, which are:

> (A) to reflect the seriousness of the offense, to promote respect for the law, and to provide just punishment for the offense;
> (B) to afford adequate deterrence to criminal conduct;
> (C) to protect the public from further crimes of the defendant; and
> (D) to provide the defendant with needed educational or vocational training, medical care, or other correctional treatment in the most effective manner.

18 U.S.C. § 3553(a)(2).

B. Discussion

In this case, the Government believes a sentence within the stipulated Guidelines range of 51 to 63 months' imprisonment would achieve the goals of sentencing and appropriately balance the factors considered pursuant to Section 3553(a).

First, a sentence within the stipulated Guidelines range is appropriate to reflect the seriousness of Ilori's conduct and to provide just punishment. Ilori engaged in a long-running conspiracy with Chancy to submit fraudulent business loan applications totaling over one million dollars. Ultimately, Chancy and Ilori intended not to repay the loans—*i.e.*, to bust them out. Although Chancy took the lead in the conspiracy and was the central point of contact with the CS and the UC, Ilori had a lengthy and substantial role in the scheme. Ilori was responsible for preparing two of the $5,000 loan applications and one of the $250,000 loan applications. (PSR ¶ 42). Ilori was present for the first in person meeting with Chancy and the CS in April 2019, as well as two in person meetings in November 2019, and he had multiple recorded calls and text messages with the CS in January and February 2020 regarding the scheme.[1] (PSR ¶¶ 21, 29, 30, 32, 35).

Throughout the scheme, Ilori did not hesitate and instead pressed forward to bring the scheme to fruition. At the first meeting in April 2019, Ilori offered to make fake documents and obtain identification information of other persons to use in the loan scheme, and he claimed he could obtain the necessary documentation to submit the loans by the following week. (PSR ¶¶ 21, 22). Ilori resumed meeting with Chancy and the CS to move ahead with the scheme within less than two weeks of his release on bail in his pending state case. (PSR ¶¶ 29, 30). At the November 12, 2019 meeting, Ilori stated he was bringing in another co-conspirator, a "white guy", whom Ilori had met in jail who was going to open bank accounts for them. (PSR ¶ 30). Ilori sourced, created, and provided two fraudulent driver's licenses with stolen identities and doctored bank statements in support of his fraudulent loan applications. (PSR ¶ 32). After the first round of loans, on a recorded call on February 8, 2020 with Chancy and the CS, Ilori stated he wanted to do another round of loans, (PSR ¶ 35), and he claimed he had bank statements ready for the new loans. On February 26, 2020, after the second round of loan applications were submitted, Ilori agreed on a call with Chancy to provide an identification to open a bank account that the CS would use to launder his portion of the fraud proceeds. (PSR ¶ 39).

In his sentencing submission, Ilori seeks to downplay the seriousness of his conduct and minimize his culpability, reflecting a minimal acceptance of responsibility. First, Ilori claims he was not directly involved in all eight loan applications, he was not actively involved in the second round of loan applications, and he did not provide Chancy with the Missouri identification card that was used to open a bank account with Michael Albarella and the CS to launder the CS's portion of the fraud proceeds. As explained above, the Government holds Ilori directly responsible for—i.e., considers Ilori to be the author of—three fraudulent loan applications, two in the first round, and one in the second round. Nevertheless, the fact that eight applications were submitted

[1] In addition, when there was a problem with one of the $5,000 loan transfers in the first round of loans and the bank would not release the funds, it was Ilori who repeatedly contacted the bank to resolve the issue, as documented by recorded text messages and calls between Ilori and the CS.

was foreseeable to Ilori because he participated in multiple conversations where it was discussed that they would apply for multiple loans and multiple rounds of loans. (*See, e.g.*, PSR ¶¶ 29, 35). The evidence also specifically shows that Ilori participated in the second round of loans and suggested doing more loans. During the November 12, 2019 meeting, Ilori claimed that he could do ten loan applications instead of the two loan applications the CS was proposing to do initially. On a recorded call with the CS on February 8, 2020, Ilori said he wanted to do another round of loans, (PSR ¶ 35), and he wanted to propose another scheme. Ultimately, in connection with the second round of loans, Ilori's fingerprints were recovered from doctored bank statements submitted in support of the loan application made using the Pennsylvania stolen identity that had also been used in the first round of loan applications. (PSR ¶ 37). The second-round application included a signed application with a different date and bank statements with a different date than in the first-round application, indicating Ilori had submitted these hardcopy documents afresh to Chancy for the second round of loans. Thus, contrary to his claim in his letter to the Court that he sought to "sabotage" the scheme, Ilori encouraged Chancy and the CS to do more loans. Indeed, Ilori's claim that he sought to sabotage the scheme is nonsensical, for if Ilori intended to sabotage the scheme, he would have reported it to law enforcement. As to the Missouri identification card, the context of Chancy's conversation with Ilori on February 26, 2020, indicates that Ilori provided Chancy the Missouri identification via WhatsApp. Chancy called Ilori in the presence of the CS and asked Ilori if he had an identity they could use and whether they could open a bank account using the stolen identifications that Ilori had previously given Chancy. (PSR ¶ 39). During the call, while discussing the ID, Chancy asked Ilori, "When are you going to send it?" and seconds later "[UI] the ID, right? On WhatsApp on my other phone." Later during the meeting, Chancy showed the CS and Albarella a photo of the ID on his phone, and the CS took a photo of the ID on Chancy's phone. (PSR ¶ 39). Regardless, Ilori admitted to conspiring to launder proceeds form the scheme as part of his guilty plea, and this factual issue is not material to sentencing in light of all the other facts in the case.

Second, Ilori argues that much of the description of Ilori's offense conduct is based on Chancy's account of Ilori's conduct, and that Chancy's account is unreliable. Ilori, however, provides no reason as to why Chancy's account is unreliable, nor is the description of Ilori's offense conduct based primarily on Chancy's description of it but also on numerous recordings of Ilori, among other evidence. At the time Chancy made the statements to the CS regarding Ilori's conduct, he was making them in furtherance of the conspiracy, and he did not know the CS was an informant. Chancy and Ilori were working toward a common objective—executing the loan scheme—and Chancy had no reason to lie regarding Ilori's role in the scheme while the scheme was ongoing. Moreover, Chancy's statements are corroborated by other evidence, such as Ilori's own statements on the recordings and Ilori's fingerprints on the loan applications. To take the example provided by Ilori in his submission, Chancy told the CS that Ilori had opened bank accounts using the identities of other people and that Ilori used driver's licenses with real identifying information that had been altered with different photographs. (PSR ¶ 23). The two loan applications in the first round of loans that used stolen identities—in contrast with the other two applications that used the identities of Chancy's known associates—included driver's licenses with the names and dates of birth of the identity theft victims but the photograph of a different individual, just as Chancy had described. (PSR ¶ 32). Ilori's fingerprints were recovered from those hardcopy applications. (*Id.*). Ilori himself stated during the November 19, 2019 recorded meeting that the driver's licenses to be used in the scheme used stolen identities. (PSR ¶ 29).

Moreover, during the recorded November 12 meeting, while discussing the scheme, Ilori stated that he had statements from different banks, including Bank of America, Chase, and TD Bank, and that in two weeks he wanted to have thirty accounts. This evidence corroborates Chancy's description of Ilori's role in the Loan Scheme.

Third, Ilori disputes that his June 28, 2019 arrest by the NYPD was connected to the instant scheme, and he maintains his innocence with respect to those pending state charges. Ilori himself, however, in discussing his arrest with Chancy and the CS on November 12, 2019, in a recorded meeting, stated in the context of discussing the arrest, "I pulled that faked ID. Shit but, the thing is [UI] how do you know what a fake ID? She can't [UI] even the cops they didn't know, [UI] so how can you know?" The CS then asked Ilori, "what kind of fake, what state was it?" and Ilori responded "Florida." One of the items seized from Ilori by the NYPD was a Florida driver's license in the name of Christopher Halstead. During that same meeting, the CS asked Ilori whether any of the bank accounts he had opened were still open, and Ilori responded he wanted "to start fresh" and use new bank accounts for the scheme. (PSR ¶ 30). This statement by Ilori indicates that Ilori had been opening bank accounts use false identities in connection with the Loan Scheme at the time he was arrested by NYPD. Regardless, because Ilori has yet to be convicted of the state charges, the primary relevance of the arrest for the purpose of Ilori's sentencing is that Ilori was not deterred from engaging in the Loan Scheme despite the arrest.

Fourth, Ilori asks the Court to take into account its finding from the *Fatico* hearing that it was the CS who initiated the scheme with Chancy. But this has no bearing on Ilori, who was not present for the initial conversation between Chancy and the CS regarding the scheme. The Government acknowledges that Chancy introduced Ilori to the scheme, but for all the reasons described above, Ilori had a substantial, prolonged, and proactive role in the scheme once invited to join it. Ilori further claims in his letter to the Court that Ilori would not be convicted of the instant crime but "for this manipulation and pressure directed from the C[S]" and that Ilori was told the CS was a "high ranking Russian gangster." There is no evidence to suggest that Ilori was manipulated or pressured by the CS—and Ilori points to none. Nor is there any evidence that Ilori was aware of or intimidated by the CS's criminal past during the scheme or threatened to engage in the scheme; indeed, Chancy conceded in his sentencing submission that he had no knowledge of the CS's criminal history at the time of the scheme. The evidence only shows that Ilori was a willing and persistent participant in the scheme over the course of almost one year.

Second, a sentence within the stipulated Guidelines range is necessary to provide specific deterrence and promote respect for the law. As outlined in the Presentence Report, Ilori has five prior convictions for fraud and forgery spanning from 1997 to 2006, as well as four other arrests related to fraud. All of the arrests and convictions involve conduct similar to the case at hand—namely, opening financial accounts using false identities to make fraudulent charges. In 1998, Ilori was sentenced to 15 months' imprisonment by the Honorable Deborah Ann Bates in this District after he pled guilty to bank fraud for opening multiple bank accounts using aliases and attempting to deposit over $100,000 in counterfeit checks. (PSR ¶ 62). When Ilori violated supervised release by using a fraudulent credit card, he was sentenced to another 24 months' imprisonment. (*Id.*). In May 2007, Ilori was sentenced in New York County Supreme Court to 42 months to seven years' imprisonment for using a fraudulently obtained credit card to purchase $2,000 worth of goods and for possession the victim's personal information and a fraudulent driver's license. (PSR ¶ 66). That same month, Ilori was also sentenced to 30 months to five years' imprisonment for attempting to open bank accounts using a forged driver's license and utility bill. (PSR ¶ 67). Ilori committed the instant offense despite previously receiving multiple serious sentences for comparable conduct, indicating a need for a substantial sentence to deter Ilori from committing future crimes. Moreover, Ilori's involvement in the instant offense was more than a momentary lapse of judgment. Ilori's participation in the conspiracy lasted almost one year, providing the defendant with ample time to reflect on his involvement in this crime and to choose to desist from engaging in the crime. In addition, Ilori was not deterred from continuing the scheme with Chancy despite his arrest by the NYPD in the midst of the scheme in June 2019. The combination of Ilori's lengthy involvement in the instant offense, Ilori's persistence to continue the scheme after his arrest in June 2019, and Ilori's lengthy criminal history involving fraud for which he served substantial sentences, together demonstrate an acute need for specific deterrence and to protect the public from further crimes by the defendant. Thus, although Ilori had less of a leading role in the scheme compared with Chancy, Ilori's substantial role in the scheme combined with his criminal history indicates that a sentence at least as serious as Chancy's sentence is warranted.

Third, a sentence within the stipulated Guidelines range is warranted to further the interests of general deterrence, and to send the message to others engaged in financial crime and identity theft that crimes of this nature will be prosecuted to the fullest extent of the law. General deterrence is an important sentencing interest in cases such as this to protect financial institutions, which are frequent targets of fraudulent actors because financial institutions cannot investigate every fraudulent transaction due to the frequency with which they are targeted by fraudsters. In other words, the risks of getting caught are substantially lower than many other theft offenses because this kind of impersonal fraud does not involve theft from a victim's person. Moreover, because identity theft victims are generally unaware of the fact that their identities have been stolen—as was the case here—identity theft victims do not know that they are victimized and cannot report the fraud. Accordingly, it is appropriate that the Court impose a sentence that meaningfully deters others who may be tempted to engage in similar conduct.

Like Chancy, Ilori argues in his sentencing submission that the Guidelines range deserves little deference because the intended loss amount was contrived by law enforcement actors as part of the sting operation. Although the loan amounts were proposed by the UC, Ilori agreed to those amounts without hesitation. Moreover, the intended loss amount is meaningful because there were two rounds of loans, and Ilori did not stop engaging in the Loan Scheme after the first round of loans totaling $20,000 was funded but instead continued to pursue the second round totaling $1 million. In addition, a sentence within the Guidelines range is appropriate not solely on account of the intended loss amount but due to aggravating factors described above that are part of the offense conduct and the defendant's criminal history. Ilori also argues that the CS influenced Ilori to use the identities of actual victims. Nevertheless, as early as the first meeting in April 2019, Ilori offered to procure the identification information of other persons to be used in the scheme, and to this day the Government does not know how or from where Ilori obtained the identifications, showing Ilori was not coached by the CS to obtain stolen identities.

C. Conclusion

For the reasons set forth above, the Government respectfully submits that a sentence within the stipulated Guidelines range of 51 to 63 months' imprisonment would be appropriate in this case.

Respectfully submitted,

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