U.S. Department of Justice

United States Attorney
Southern District of New York

The Silvio J. Mollo Building
One Saint Andrew's Plaza
New York, New York 10007

June 28, 2023

BY ECF

The Honorable Mary Kay Vyskocil
United States District Judge
Southern District of New York
500 Pearl Street
New York, New York 10007

Re: *United States v. Adedayo Ilori*, S1 21 Cr. 746 (MKV)

Dear Judge Vyskocil:

The Government respectfully writes regarding the sentencing of defendant Adedayo Ilori ("Ilori" or the "defendant") in the above-captioned case, in response to defense counsel's letter dated June 9, 2023. (Dkt. 129.)

Additional Corrections to the Final Presentence Investigation Report

The Government respectfully requests that the Court make the following additional corrections to the Final Presentence Investigation Report ("PSR"), dated February 14, 2023 (Dkt. 113), during sentencing:

- On page 2, the statutory citations for Count 4 should read "18 U.S.C. §§ 1344, 2, and 3**147**."
- As noted in the Government's sentencing submission, while the PSR reflects the correct total offense level of 40, the itemized offense level calculation should include a paragraph for a two-level enhancement pursuant to U.S.S.G. § 2S1.1(b)(2)(B), because the defendant was convicted under 18 U.S.C. § 1956. (*See* PSR ¶¶ 66-78; Gov't Sent. Sub. at 8.)
- In paragraphs 21, 56, 57, and 59, the amount of approved fraudulent loans should read $**1,024,625** (*See* GX 750.)
- In paragraph 139 and on pages 34, 36, and 39, the amount of restitution owed should read **$1,120,462.47**, of which $1,072,062.47 is owed to the Small Business Administration, with the remaining individual restitution of $48,400 owed to the other victim identified in the Schedule of Victims. (*See* GX 750.)
- Page 40 should read, "Restitution **in the amount of $1,072,067.47** is joint and several with his codefendant in this case . . . ."

Purported Disputed Issues of Fact

Ilori argues that there are several disputed issues of fact relevant to the Guidelines calculation and the Court's sentencing determination. The Court has received ample evidence over the course of Ilori's trial to resolve these issues, and Ilori is not entitled to a *Fatico* hearing.

A. Applicable Law

Facts relied on at sentencing for the purpose of calculating the applicable Sentencing Guidelines must be established by a preponderance of the evidence. *United States v. Thorn*, 317 F.3d 107, 117 (2d Cir. 2003); *United States v. Vaughn*, 430 F.3d 518, 527 (2d Cir. 2005). "[E]ven acquitted conduct may be treated as relevant for purposes of Guidelines calculations 'so long as that conduct has been proved by a preponderance of the evidence.'" *United States v. Jones*, 531 F.3d 163, 176 (2d Cir. 2008) (quoting *United States v. Watts*, 519 U.S. 148, 157 (1997)). Furthermore, "a sentencing court, like a jury, may base its fact-finding on circumstantial evidence and on reasonable inferences drawn therefrom." *United States v. Gaskin*, 364 F.3d 438, 464 (2d Cir. 2004).

As always, the "sentencing court is afforded broad discretion in resolving disputed factual issues." *United States v. Ambrosio*, 129 F.3d 114, 1997 WL 701368, at *2, n.1 (2d Cir. 1997) (summary order) (citing *United States v. Ibanez*, 924 F.2d 427, 430 (2d Cir. 1991)). The sentencing court "is entitled to rely on any type of information known to it" in resolving sentencing disputes. *United States v. Tracy*, 12 F.3d 1186, 1203 (2d Cir. 1993) (citing *United States v. Carmona*, 873 F.2d 569, 574 (2d Cir. 1989)). At a sentencing hearing, the Federal Rules of Evidence do not apply, and the Court is not bound by rules governing hearsay, so long as the basis for the court's determination has indicia of reliability and is not otherwise contrary to a defendant's due process rights. *See United States v. Fatico*, 579 F.2d 707, 711 (2d Cir. 1978); *see also United States v. Martinez*, 413 F.3d 239, 242 (2d Cir. 2005) ("Both the Supreme Court and this Court, however, have consistently held that the right of confrontation does not apply to the sentencing context and does not prohibit the consideration of hearsay testimony in sentencing proceedings."). Rather, "[a]ny information or circumstance shedding light on the defendant's background, history and behavior may properly be factored into the sentencing determination." *Carmona*, 873 F.2d at 574 (citing *Williams v. New York*, 337 U.S. 241, 250–51 (1949)).

Ilori is not entitled to a *Fatico* hearing regarding any of the factual issues he raised in his sentencing submission or in his June 9, 2023 letter. *United States v. Phillips*, 431 F.3d 86, 983 (2d Cir. 2005) ("The district court is not required, by either the Due Process Clause or the federal Sentencing Guidelines, to hold a full-blown evidentiary hearing in resolving sentencing disputes. All that is required is that the court afford the defendant some opportunity to rebut the Government's allegations.") (quoting *United States v. Slevin*, 106 F.3d 1086, 1091 (2d Cir. 1996)); *United States v. Guang*, 110 F.3d 110, 122 (2d Cir. 2007) (affirming the district court's decision not to hold a *Fatico* hearing where the district court "had heard extensive trial testimony, had observed the demeanor of the witnesses and assessed their credibility[,] . . . [and] had reviewed the submissions of all parties, as well as the presentence investigation report," and the defendants "had notice of the proposed enhancements, including the evidence upon which the enhancements were based, and had an opportunity to dispute the evidence").

B. Contested Guidelines Issues

Ilori objects to six Guideline enhancements included in the PSR: (1) the calculation of loss amount in paragraph 67; (2) the sophisticated means enhancement in paragraph 69; (3) the two-level enhancement for receiving more than $1 million in gross receipts in paragraph 71; (4) the inclusion of Source 4 Jet Corp. / William Jamieson[1] and Creative Media Software Solution Inc. / Thomas Hockenberry in the calculation of loss amount in paragraph 67; (5) the enhancement for 10 or more victims in paragraph 68; and (6) the enhancement regarding authentication features in paragraph 70.

Ilori previously objected to the first three of these enhancements. *See* PSR ¶¶ 67, 69, 71. The Government provided a response, explaining the factual basis for each enhancement, and the U.S. Probation Office agreed with the Government. PSR at 31-32; *see also* Def. Sent. Sub. at 2-3 (Dkt. 118); Gov't Sent. Sub. at 8-9 (Dkt. 120). Ilori concedes that he is not entitled to a *Fatico* hearing regarding these factual issues. (Def. Ltr. June 9, 2023, Dkt. 129). The last three objected-to enhancements are newly lodged. Dkt. 129; *see also* PSR at ¶¶ 67, 68, 70. Although Ilori concedes a *Fatico* hearing is not required, the Government provides a brief summary below as to the factual basis supporting the imposition of the first three contested enhancements. As for the last three contested enhancements, like the others, the factual issues have been fully litigated during trial and presented to the Court; accordingly, no *Fatico* hearing is warranted, and the case should proceed to sentencing. *Guang*, 110 F.3d at 122 (2d Cir. 2007). The Government provides a summary of some of the relevant evidentiary support below:

1) Loss Amount (Paragraph 67)

The evidence presented at trial established that Ilori and Recamier attempted to fraudulently obtain $10,047,745 in pandemic relief loans. (Trial Tr. at 312:12-25; GX 750.) Accordingly, because "loss under the guidelines does include intended loss" in the Second Circuit, *see United States v. Almaleh*, 17 Cr. 25 (ER) (S.D.N.Y. Jan. 20, 2023), Tr. at 10-11, the 20-point guideline enhancement for losses greater than $9.5 million but less than $25 million applies. *See also* PSR at 33; U.S.S.G. § 2B1.1(b)(1)(K).

2) Sophisticated Means Enhancement (Paragraph 69)

As noted in the Government's sentencing submission, Ilori and Recamier utilized dozens of stolen identities, fraudulent ID and bank cards, falsified bank records, numerous corporations, and multiple electronic devices and accounts to advance the fraud scheme. *See* Gov't Sent. Sub.

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[1] Ilori's June 9, 2023 letter challenges the inclusion of loss relating to "Source 4 Jet Corp./ William Jamison." (Dkt. 129 at 2.) As noted herein, the fraudulent Source 4 Jets Inc. loan was submitted under the name of identity theft victim Thomas Allen, whereas the fraudulent Jetaway Jets Corp. loan was submitted under the name of identity theft victim William Jamison. In any event, both fraudulent loans were part of the scheme and are properly included in the loss calculation.

at 9; *see also* GX 524, 525, 526, 530, 531, 532 (several of the fraudulent ID and bank cards the Government presented at trial). Ilori and Recamier utilized the names of nine different identity theft victims and 11 corporations in connection with the 14 fraudulent loan applications they submitted alone. (GX 750.) During trial, Special Agent Harry Lidsky testified about the sophistication of the fraud and characterized law enforcement's efforts to identify Ilori and Recamier (*i.e.*, the individuals behind the multiple fraudulent identities and loan applications) as "chasing ghosts." (Trial Tr. at 240, 275.) The Government introduced evidence of 18 email accounts that Ilori and Recamier registered in the names of various identity theft victims and used in furtherance of the fraud, including to submit false documents to banks, to lease a luxury car, and to rent an apartment. (GX 730; Trial Tr. at 435-39, 640-43.) The record in this case clearly supports the application of the sophisticated means enhancement under U.S.S.G. § 2B1.1(b)(10)(C).

3) Gross Receipts Enhancement (Paragraph 70)

Ilori had access to and control over the fraudulent bank accounts that he and Recamier opened in the names of identity theft victims, into which they directed the $1,024,625 in funded fraudulent loans. (GX 700, 708, 709; Trial Tr. 75-76, 343, 609.) Ilori therefore individually received more than $1 million from banks. *See* Gov't Sent. Sub. at 9. Accordingly, the gross receipts enhancement under U.S.S.G. § 2B1.1(b)(17)(A) applies.

4) Calculation of Loss Amount (Paragraph 67)

Ilori challenges the inclusion of the loss amount associated with two fraudulent loans—Source 4 Jets Inc., applied for in the name of William Jamison and Creative Media Software Solution Inc., applied for in the name of Thomas Hockenberry. (Dkt. 129 at 2.) There is more than sufficient evidence to carry the preponderance standard and attribute the loss of both loans to Ilori's conduct.

At trial, the Government presented evidence regarding all 14 of Ilori's and Recamier's fraudulent Small Business Administration loans. (GX 750.) That evidence included, among other things, the loan applications, falsified business records for the companies purportedly applying for the loans, fake IDs in the names of identity theft victims who were purportedly associated with the loan applications, and witness testimony. The actual and attempted fraudulent loans were properly included in the loss amount calculation, *see* PSR at ¶ 67, 33; U.S.S.G. § 2B1.1(b)(1)(K), and Ilori's arguments to the contrary are meritless.

One of the attempted fraudulent loans, purportedly for Source 4 Jets Inc., was submitted under the name of identity theft victim Thomas Allen. (*Id.*; GX 163; Trial Tr. 624-26.) Another, purportedly for Jetaway Jets Corp., was submitted under the name of identity theft victim William Jamieson. (GX 162; GX 590; Trial Tr. 130-31.) Files recovered from Ilori's computer—under his username of "DfinebyDayoIlori"—included a Source 4 Jets Photoshop document to which edits had been. (GX 610; Trial Tr. 624-26.) And an SBA employee testified that the Source 4 Jets Inc. and the Jetaway Jets Corp. loan applications were related by electronic device and IP addresses to other fraudulent loans that Ilori and Recamier submitted, including the funded M2 Gold Jet LLC and Twinway Air Charter loans. (Trial Tr. 131-34; GX 750.)

The identity theft evidence introduced at trial included a false ID in the name of identity theft victim Thomas Hockenberry, whose name was associated with the fraudulent Creative Media Software Solution Inc. loan application. (GX 750; GX 166.) Recamier's photograph was on the Hockenberry fake ID; that fake ID and bank cards in Hockenberry's name were among the evidence recovered from Ilori's person and the Mercedes Ilori was driving at the time of his arrest (which Mercedes Ilori and Recamier had falsely leased in Hockenberry's name). (Trial Tr. 331; GX 530.) The Government also introduced documentary evidence relating to the fraud, including photographs of a notebook in which Ilori and Recamier tracked the personal identifiable information ("PII") of identity theft victims and indicated whether the identities were "good" or "bad" to use at certain banks. (*See, e.g.*, GX 589.)

All together, these pieces of trial evidence more than satisfy the requisite preponderance standard in attributing these loans to Ilori's crimes.

5) <u>Enhancement for 10 or More Victims (Paragraph 68)</u>

Ilori now summarily claims that the SBA "was the only victim," so the two-level enhancement under U.S.S.G. § 2B2.1(b)(2)(A)(i) does not apply. (Dkt. 129 at 2; PSR ¶ 67.) Not so. Ilori was convicted on multiple counts for the scheme to defraud the SBA *and* financial institutions, including by making false statements and submitting fraudulent documents, opening bank accounts in the names of identity theft victims, and submitting fraudulent loan applications. *See* S1 21 Cr. 746 (MKV). In addition to the SBA and the financial institutions Ilori and Recamier defrauded, they victimized *individuals*—using the PII of more than a dozen individual identity theft victims in furtherance of the fraud. Three of those identity theft victims testified at trial and described that their names and personal information were used without their authorization, including to open accounts the victims were unaware of and to incur debt that still chases the victims to this day. (Gov't Sent. Sub. at 6-7, 11; Trial Tr. at 45-90, 441-51.) Ilori and Recamier used the names of nine different identity theft victims in connection with the fraudulent loan applications they submitted, *see* GX 750, and the Government's evidence at trial included records relating to fraudulent email accounts that Ilori and Recamier registered in the names of a total of 18 individual identity theft victims and used in furtherance of the fraud. (GX 730.) The record in this case clearly supports the application of the enhancement for 10 or more victims under U.S.S.G. § 2B1.1(b)(10)(C).

6) <u>Authentication Feature Enhancement (Paragraph 70)</u>

In his June 9, 2023 letter, Ilori objects to the enhancement in paragraph 70 "[t]o the extent that this enhancement is applied regarding authentication features." (Dkt. 129 at 2.) Specifically, "Ilori asserts that any authentication features that are relevant to his case were not issued by a governmental authority." (*Id.*) Again, Ilori's objection is meritless, and the record supports this enhancement.

The evidence clearly established that the fraud scheme "involved the possession of 5 or more means of identification that unlawfully were produced or obtained." U.S.S.G. § 2B1.1, application note 10(D). Those means of identification included, among others, false driver's licenses in the names of identity theft victims Jonathan Herttua, Thomas Hockenberry, William Jamieson, and Darwin Long (GX 512, 625, 645, 531); a false social security card in the name of identity theft victim Thomas Hockenberry (GX 652); and two false passports bearing Ilori's photograph, but with different names and PII. (GX 607.) Contrary to Ilori's assertion, all these forms of authentication features—drivers' licenses, social security cards, and passports—are issued by an "issuing authority," as defined in 18 U.S.C. § 1028(d)(1). Accordingly, Pretrial Services correctly applied the enhancement pursuant to U.S.S.G. § 2B1.1(b)(11)(A)(i), (ii), and (b)(11)(C)(ii). (PSR ¶ 70.)

Imposition of Financial Penalties

As noted in the Government's sentencing submission, the Government seeks the imposition of financial penalties and understands the defendant is contesting the applicability of these financial penalties. *See* Gov't Sent. Sub. at 14 (Dkt. 120).

A. Forfeiture

As to forfeiture, attached hereto as Exhibit A is a proposed forfeiture order seeking to forfeit the Coinbase Account, Robinhood Account, and Schwab Account enumerated in the Superseding Indictment, as well as a money judgment in the amount of $1,024,625.

As relevant here, the forfeiture statutes allow for the forfeiture of proceeds of fraud crimes, including those of which the defendant was convicted. *See* 18 U.S.C. § 982(a)(2)(A). The forfeiture statutes also allow for the forfeiture of property involved in money laundering. *See* 18 U.S.C. § 982(a)(1).

The three investment accounts received funds obtained from the loan fraud scheme and were also used to conceal the source and control of the criminal proceeds as part of the money laundering crime. (*See, e.g.*, GX 705, 706, 707, 708, 709.) As a result, the specific property constituting these investment accounts is forfeitable as both the proceeds of the fraud crimes and as property involved in money laundering. The money judgment reflects the proceeds of the loan fraud scheme that the defendant obtained and is thus forfeitable as the proceeds of a fraud crime, pursuant to Section 982(a)(2)(A). (*See, e.g.*, GX 750.)

B. Restitution

As to restitution, attached hereto as Exhibit B is a proposed order of restitution. The restitution statutes establish mandatory restitution to the victims of fraud and financial crimes. *See* 18 U.S.C. § 3663A. Here, the Government's restitution figure captures the harm to the victims of the defendant's crimes. The proposed restitution order seeks joint-and-several restitution with co-defendant Chris Recamier in the amount of $1,120,462.47, which is the total amount of all approved SBA loans plus interest. *See* GX 750. In addition, the Government is seeking $48,400 in individual restitution from Ilori, which is the amount in losses submitted by the leasing company that manages the apartment Ilori falsely rented under the name of an identity theft victim.

* * *

As set forth above and in the Government's prior sentencing submission, the defendant's objections to the Guidelines Range, as calculated by the PSR, should be rejected. The Court has ample evidence from the trial in this matter to resolve these disputed issues. Because a *Fatico* hearing is unnecessary and all that remains is sentencing, the Government respectfully submits that sentencing should proceed as promptly as possible. At sentencing, the Government intends to request that the Court enter the proposed forfeiture and restitution orders, which are consistent with the relevant law and the evidence established at trial. Among other reasons, the imposition and collection of these financial penalties, which will advance the Government's efforts to make victims whole, is an important basis for the sentencing proceeding to be scheduled without undue delay.

Respectfully submitted,

DAMIAN WILLIAMS
United States Attorney for the
Southern District of New York

By: /s/__________________________
Juliana N. Murray
Daniel G. Nessim
David R. Felton
Assistant United States Attorneys
(212) 637-2314 / -2486 / -2299