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

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	**No. 1:23-CR-246-WMR-RDC**
	)	
	)	
AUSTIN M. SIAMPWIZI,	)	
	)	
Defendant.	)	

DEFENDANT'S SENTENCING MEMORANDUM

Defendant Austin Siampwizi respectfully submits this Sentencing Memorandum for the Court's review in advance of his March 26, 2024 sentencing hearing. For the reasons set forth below, Mr. Siampwizi asks that this Court sentence him to no more than 18 months in prison.

BACKGROUND

Mr. Siampwizi was indicted on July 25, 2023 and charged with participating in two completely separate fraud schemes. The first scheme related to an unemployment benefits scheme involving residents of Washington State (hereinafter, "Unemployment Scheme"). His co-conspirators allegedly filed fraudulent unemployment benefits claims; directed the proceeds of that wire fraud into various business bank accounts; used funds from those accounts to purchase money orders; and cashed those money orders. (Dkt. 1 ¶¶ 9-12.) Mr.

Siampwizi's alleged role was cashing those money orders, and he was charged with three substantive money laundering counts related to money orders he cashed. (*Id.* ¶ 13.) The Unemployment Scheme is alleged to have spanned two months, March through May 2020. (*Id.* ¶ 1.)

The second charged scheme related to one fraudulent Economic Injury Disaster Loan application Mr. Siampwizi allegedly filed for his business, Global Car Rental LLC (hereinafter, "EIDL Scheme"). The government charged that he falsely claimed that the business had six employees and gross revenues of $226,500 in 2010. (*Id.* ¶ 23.) The EIDL Scheme is alleged to have begun after the Unemployment Scheme, spanning from July 16, 2020 to August 11, 2020. (*Id.* ¶ 16.)

On December 14, 2023, Mr. Siampwizi pled guilty to Count 1 of the indictment, which charged him with participating in the Unemployment Scheme money laundering conspiracy (18 U.S.C. § 1956(h)). (Dkt. 32-1.) Mr. Siampwizi admitted that he personally laundered $175,600 as part of that scheme, but reserved his right to dispute whether (1) funds laundered by other conspirators, and (2) any EIDL and PPP loans the government believes were fraudulent would count towards his loss amount as relevant conduct. (*Id.* at 5 n. 1.)

The U.S. Probation Officer prepared a Presentence Report ("PSR") to which both parties submitted timely objections. In addition to factual objections, Mr. Siampwizi objected to the PSR's calculation for loss amount and restitution. The probation officer included categories of loss that were nowhere in the indictment, including an application for Georgia unemployment insurance benefits Mr. Siampwizi allegedly filed for himself, Paycheck Protection Program ("PPP") loan applications for other businesses he owns, and a scheme to file fraudulent tax returns with the Internal Revenue Service. (PSR ¶¶ 29-32, 34-43.) None of these schemes are mentioned in the indictment.

Adding these unrelated schemes together, the PSR concludes that Mr. Siampwizi is responsible for laundering $363,976.99 and that his Base Offense Level should be 20 based on that amount. (PSR ¶¶ 49, 60.) It concludes that restitution owed is $279,210.52. (PSR ¶ 57.) After factoring in the undisputed Guidelines adjustments and his Criminal History Category of Three, this yields a custody Guidelines range of 37 to 46 months. Mr. Siampwizi objected, arguing that his loss should be cabined to the schemes with which he was charged and found guilty and that the restitution he owes should be limited to those schemes. His Base Offense Level should be 18, which would adjust his custody Guidelines range to 30 to 37 months.

ARGUMENT

1. The Applicable Guideline, USSG § 2S1.1, Does Not Support Expanding the Loss Amount Beyond the Money Laundering Count to Which Mr. Siampwizi Pled Guilty.

The loss amount for money laundering convictions shall be 8 plus the offense level enhancement in USSG § 2B1.1 (fraud loss table) that "correspond[s] to the value of the laundered funds." USSG § 2S1.1 This language is plain, concise, and means exactly what it says. To the extent the term "laundered funds" could be considered ambiguous, this Court may look to the Sentencing Commission's commentary for further guidance. *United States v. Dupree*, 57 F.4th 1269, 1274-75 (11th Cir. 2023). That commentary states that "laundered funds" are the "property, funds, or monetary instrument involved in" the violation of 18 U.S.C. § 1956. USSG § 2S1.1 cmt. n. 1.

The PSR is simply wrong, then, to include within "laundered funds" those amounts that stem from schemes that have nothing to do with the money laundering charged in the indictment and for which this Court found Mr. Siampwizi guilty. Loss is tied to the funds laundered, not that sum plus whatever miscellaneous sums from unrelated fraud schemes the government sends to the Probation Officer for inclusion in the PSR.

2. <u>The Extrinsic Fraud Schemes Are Not "Relevant Conduct" Under USSG § 1B1.3.</u>

To the extent the government intends to argue that fraud stemming from schemes for which Mr. Siampwizi was not convicted and not even charged, that conduct can only factor into the loss amount if it satisfies the test for "relevant conduct." *See* USSG § 1B1.3. That Guideline makes clear, however, that conduct that can affect the offense level is relevant only if it is within the scope of the crime of conviction. Such conduct includes:

> *(1) (A) all acts and omissions committed, aided, abetted, counseled, commanded, induced, procured, or willfully caused by the defendant; and*
>
> *(B) in the case of a jointly undertaken criminal activity (a criminal plan, scheme, endeavor, or enterprise undertaken by the defendant in concert with others, whether or not charged as a conspiracy), all acts and omissions of others that were—*
>
> > *(i) within the scope of the jointly undertaken criminal activity,*
> >
> > *(ii) in furtherance of that criminal activity, and*
> >
> > *(iii) reasonably foreseeable in connection with that criminal activity;*
>
> *that occurred during the commission of the offense of conviction, in preparation for that offense, or in the course of attempting to avoid detection or responsibility for that offense.*

USSG § 1B1.3(a)(1). It is this last clause—requiring that the conduct occur as part of the convicted conduct (including in preparation or coverup)—that the PSR overlooks.

The Guideline commentary provides further support for limiting relevant conduct to conduct that is actually part of the offense of conviction and not wholly extraneous conduct. The "scope" of relevant conduct "is not necessarily the same for every participant" and requires the court to "first determine the scope of the criminal activity the particular defendant agreed to jointly undertake." USSG § 1B1.3 cmt. n. 3(a). The discussion in this section is describing the scheme or conspiracy that forms the basis of conviction (e.g., a fraud scheme or drug distribution conspiracy). The examples illustrated in Note 4 of the commentary support limiting "relevant conduct" to that which is within the scope of the scheme at issue in the count of conviction, not wholly separate conduct.

Relevant conduct also incorporates conduct for which a defendant is charged but not convicted if—had the defendant been convicted of those counts—they would group under USSG § 3D1.2(d). *See* USSG § 1B1.3(a)(2) and cmt. n. 5. Such counts would only group if the "involve[d] substantially the same harm" as determined by "the total amount of harm or loss, the quantity of a substance involved, or some other measure of aggregate harm, or if the offense behavior is ongoing or continuous in nature and the offense guideline is written to cover such behavior." USSG § 3D1.2(d).

The PSR maintains the probation officer's position, over defense objection, that the Georgia Unemployment Benefits scheme and PPP/EIDL loan schemes count as relevant conduct because they "would have been grouped pursuant to USSG § 3D1.2(d)." (PSR ¶ 49.) But this conduct was not even *charged*, but for the one EIDL loan. The application note to USSG § 1B1.3 makes it clear that the defendant need not have been "convicted of multiple counts" for the grouping rule to apply in the relevant conduct context, *see* USSG § 1B1.3 cmt. n. 5(A), but if the Sentencing Commission intended this rule to apply to conduct with which the defendant is not even *charged*, it would have so clarified. The grouping rule clearly applies to "counts," and thus by incorporating the grouping rule into the relevant conduct guideline, the Sentencing Commission intended for courts to consider closely-related counts that would have grouped had there been convictions. It is completely nonsensical to read the grouping rule under the relevant conduct guideline to include conduct that is not even charged and for which no one ever has made even a probable cause determination.

3. <u>The Factors Under 18 U.S.C. § 3553(a) Support a Downward Variance.</u>

a. Promoting Respect for the Law (18 U.S.C. § 3553(a))

Within two months of indictment, Mr. Siampwizi indicated to the government that he was interested in resolving this case without trial. He had significant information to share about others involved in his scheme of conviction and other fraud schemes, and he has participated in two fulsome debriefs at the government's request. He has provided the government with documentary evidence and other critical sources of information that presumably the government will use to investigate others involved in schemes to defraud.

Despite this cooperation, the government is unwilling to move for a downward departure for Mr. Siampwizi's substantial assistance under USSG § 5K2.1. Presumably, the government intends to move for relief under Rule 35 if it later determines that Mr. Siampwizi's further assistance is needed in the prosecution of other individuals, but he has no guarantee that could happen and—with First Step Act credits—it is entirely possible he could have served his sentence entirely before the government even makes charging decisions regarding other individuals, much less requires his assistance at trial.

For this reason, this Court is empowered to acknowledge the need for defendants like Mr. Siampwizi to take the risk—sometimes despite great concern for personal safety—and aid law enforcement where they can. While a defendant's cooperation may not meet the government's subjective standard of "substantial assistance," it is still behavior courts should want to acknowledge and encourage.

b. Personal History and Characteristics of the Defendant

Mr. Siampwizi bears significant financial responsibility for his three children—two of whom will be in college while he serves his sentence and will be impacted by his constrained ability to help with tuition and living expenses.

Despite his troubled past, Mr. Siampwizi is a hard worker and has built a successful business since the Covid-19 pandemic, Global Group Development and Construction, LLC ("GGDC"). The PSR and the government have taken the view that his business ventures are all fraudulent, but they are not. Attached as Exhibit A is a letter of support from Shanell Watson, the Business Development Manager and Project Manager of GGDC. She describes Mr. Siampwizi's role in the company and how his leadership has impacted the company's growth and the employees working for that company. Attached as Exhibit B are several documents showing the construction projects GGDC has engaged in and constitutes proof that he is running a legitimate business.

The success of GGDC speaks to Mr. Siampwizi's character for reasons that go beyond just being a successful businessman. He is a successful businessman who has a federal felony drug conviction, which is an obstacle that often proves insurmountable for those trying to reenter society and build fruitful lives after serving significant prison time for drug charges. He acknowledges that his road since reentry has not been without stumbles. The financial challenges brought about during the Covid-19 pandemic affected Mr. Siampwizi's business as it did many other small business owners, particularly those in the home construction industry. And like many others who have been held to account for the decisions they made during the pandemic, Mr. Siampwizi made some monumentally poor decisions in trying to survive the financial drought.

But he weathered the pandemic and has built GGDC to be the successful company it is today. He has put a business continuity plan in place so the company continues to operate while he is incarcerated, but it will no doubt be impacted by his absence. He asks this Court to recognize that the community is better served by him being out of prison, working to pay his restitution, providing jobs to those who have come to depend on him, and quite literally building for the better good of this community.

For these reasons, Mr. Siampwizi urges this Court to find that a sentence of 18 months is sufficient but not greater than necessary to achieve the important sentencing goals outlined in 18 U.S.C. § 3553(a) while not permanently crippling the significant momentum he has worked hard to achieve.

Respectfully submitted this 22nd day of March, 2024.

By: /s/ ***Lynsey M. Barron***
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CERTIFICATE OF SERVICE

I hereby certify that on the below date I electronically filed the foregoing Defendant's Sentencing Memorandum with the Clerk of Court using CM/ECF system which will automatically send email notification of such filing to the to the following attorneys of record.

This 22nd day of March, 2024.

/s/*Lynsey M. Barron*
By: Lynsey M. Barron
Ga. Bar No. 661005

Attorney for Austin Siampwizi