U.S. Department of Justice

United States Attorney
Eastern District of New York

CWE/JLB
F. #2020R00955

271 Cadman Plaza East
Brooklyn, New York 11201

November 14, 2022

By ECF

The Honorable Frederic Block
United States District Judge
Eastern District of New York
225 Cadman Plaza East
Brooklyn, New York 11201

Re: United States v. Charlene Wint
Criminal Docket No. 21-477 (FB)

Dear Judge Block:

The government respectfully submits this letter in advance of the sentencing of Charlene Wint (the "defendant"), which is currently scheduled for November 17, 2022. On September 23, 2021, the defendant pled guilty before the Honorable Roanne L. Mann, United States Magistrate Judge, Eastern District of New York, to a single-count Information charging her with participating in a conspiracy to commit bank and wire fraud, and in violation of Title 18, United States Code, Section 1349. For the reasons set forth herein, a sentence within the United States Sentencing Guidelines ("Guidelines" or "USSG") range 41 to 51 months' imprisonment is appropriate in this case.

I. Background[1]

The Paycheck Protection Program

In March 2020, the President of the United States signed the Coronavirus Aid, Relief, and Economic Security ("CARES") Act into law. It was designed to provide emergency financial assistance to the millions of Americans who were suffering the economic effects of the COVID-19 pandemic. One source of relief provided by the CARES Act was the authorization of up to $349 billion in forgivable loans to small businesses for job retention and certain other expenses through a program referred to as the Paycheck Protection Program ("PPP").

To obtain a PPP loan, a qualifying business was required to submit a PPP loan application signed by an authorized representative of the business. The PPP loan application required the business, through its authorized representative, to acknowledge the program rules

[1] Unless otherwise noted, the facts in this section come from the Information and Pre-Sentencing Report ("PSR") for the defendant.

and to make certain affirmative certifications to be eligible to obtain a PPP loan. In the PPP loan application, the small business was required to state, among other things, its: (a) average monthly payroll expenses and (b) number of employees. These figures were used to calculate the amount of money the small business was eligible to receive under the PPP. In addition, businesses applying for a PPP loan were required to provide documentation showing their payroll expenses.

The Economic Injury Disaster Loan Program

The Economic Injury Disaster Loan ("EIDL") program was a Small Business Administration ("SBA") program that provided low-interest financing to small businesses, renters and homeowners in regions affected by declared disasters. Another source of relief provided by the CARES Act was the authorization for the SBA to provide EIDLs of up to $2 million to eligible small businesses experiencing substantial financial disruption due to the COVID-19 pandemic. Under the program, the SBA was authorized to issue advances of up to $10,000 to small businesses within three days of applying for an EIDL Advance. The amount of an EIDL Advance was determined based on the number of employees working for the applicant. The advance did not have to be repaid.

To obtain an EIDL or EIDL Advance, a qualifying business was required to submit an application to the SBA and provide information about its operations, such as the number of employees, gross revenues for the 12-month period preceding the disaster, and cost of goods sold in the 12-month period preceding the disaster. In the case of EIDLs for COVID-19 relief, the 12-month period was the period preceding January 31, 2020. The applicant also was required to certify that all the information in the application was true and correct to the best of the applicant's knowledge.

EIDL applications were submitted directly to the SBA and processed by the SBA with support from a government contractor. The amount of the loan, if the application was approved, was determined based, in part, on the information provided in the application about number of employees, revenue, and cost of goods, as described above. Any funds issued under an EIDL were issued directly by the SBA. EIDL funds could be used for payroll expenses, sick leave, production costs, and business obligations, such as debts, rent and mortgage payments. If the applicant also obtained a loan under the PPP, the EIDL funds could not be used for the same purpose as the PPP funds.

The Fraudulent Scheme

Defendant is a 54-year-old woman who resided in the Bronx, New York. She worked as the second most senior employee at a bank branch in Manhattan ("Bank 1"). Taking advantage of that position, the defendant engaged in a scheme where she and her co-conspirators fraudulently obtained approximately $3.5 million in PPP loans.

The defendant, co-conspirator #1, co-conspirator #2, and co-conspirator #3 (the "Bank Employees"),[2] were employed at a retail branch of Bank 1 located at 125th Street, New York City. Bank 1 is a national bank with locations around the country.

Following the enactment of the CARES Act, the defendant and Bank Employees, together with others, effectuated a scheme to submit fraudulent PPP loan applications on behalf of Bank 1 customers who did not legitimately qualify for loans under the PPP program in exchange for "commissions" taken from loan proceeds. The defendant and Bank Employees worked with a network of recruiters to identify borrowers who were either existing Bank 1 customers or became Bank 1 customers after they were recruited. In exchange for their assistance, the defendant and Bank Employees gave the recruiters "commissions" from the PPP loan proceeds.

After borrowers were recruited to join the scheme, the defendant and Bank Employees assisted customers with all aspects of the PPP loan application process. The defendant personally helped borrowers fill out fraudulent PPP loan application documents that contained fraudulent information. As part of the scheme, the defendant and Bank Employees also worked with tax preparers to obtain false tax documents, which were provided as support for the fraudulent PPP applications to maximize the loan amount for each borrower's business. In addition, the defendant and Bank Employees submitted fraudulent EIDLs on behalf of recruited customers which also contained false information.

In addition to relying on recruiters to find complicit customers, the defendant personally recruited many borrowers to the scheme. Once recruited, the defendant directed applicants (who did not have legitimate businesses) to others who would assist them in fabricating documents needed for the applications. This included Hashim Campbell ("Campbell"), an accountant, and co-conspirator #4 (another accountant not employed by the bank). Campbell and co-conspirator 4 prepared false tax documentation, including false W2s and 941s, which overstated the applicants' business payroll information. Campbell and co-conspirator #4 received approximately 10% of each loan that was supported by false tax documents. In other cases, rather than sending the applicants to Campbell, the defendant and Bank Employees forwarded the applicants' personal information to Campbell (e.g. name, business name, SSN, etc.) and Campbell used the information to prepare false tax documents, without ever meeting the loan applicant. For applicants with legitimate businesses, Campbell inflated financial figures on tax documents so that the applicants would qualify for larger PPP loans. For applicants with no businesses, Campbell created false tax returns.

After Campbell prepared the false tax documents, he sent the documents, often via email, to the defendant and Bank Employees.

Campbell demanded 10% of each PPP loan that was processed using the false documents that he prepared, and applicants paid Campbell directly. Ultimately, Campbell accepted approximately $100,000 in commissions of PPP loan proceeds to which he was not

[2] These co-conspirators have been charged in other cases pending in this district before Your Honor.

entitled. The false tax documents that Campbell prepared were used to support approximately $1,000,000 in fraudulent PPP loans to which the applicants were not entitled.

Once the defendant borrowers' PPP applications were complete, with all required paperwork, the defendant forwarded the applications to her supervisor for approval. The supervisor, who was a co-conspirator and the branch manager, was responsible for reviewing and approving all the PPP loan applications from the branch. The defendant was instructed by her co-conspirator to call applicants into the bank when their PPP loans were funded so the applicants could withdraw the money and make payments to the co-conspirators.

The defendant and her co-conspirators profited from their scheme through the commissions they received from the straw borrowers. This was done in two ways. In some instances, once a borrower obtained a fraudulent PPP loan, one of the co-conspirators determined a "commission" amount each borrower owed the Bank Employees. Other times, as part of the PPP application process, the defendant and the Bank Employees often required borrowers to sign "starter" checks, which were legally negotiable instruments often issued by banks to customers who opened new checking accounts. Once the PPP loans were funded, the defendant and the Bank Employees used the signed starter checks to make withdrawals from borrowers' accounts. In some instances, the defendant and Bank Employees used the starter checks to purchase cashiers' checks, which they used to pay themselves the "commissions.".

The defendant obtained thousands of dollars in "commissions" from the PPP loan proceeds after processing dozens of fraudulent PPP loans totaling approximately $3.5 million. The defendant demanded approximately $5,000 in loan proceeds from each of her bank customers that she helped to fraudulently obtain PPP loans and was aware that the Bank Employees demanded similar payments. The defendant also submitted a number of EIDL applications on behalf of borrowers and was, at times, paid "commissions" with respect to the EIDLs.

II. Applicable Law

The Supreme Court has explained that the Court "should begin all sentencing proceedings by correctly calculating the applicable [Guidelines] range. As a matter of administration and to secure nationwide consistency, the Guidelines should be the starting point and the initial benchmark." Gall v. United States, 552 U.S. 38, 49 (2007) (citation omitted).

Next, a sentencing court should "consider all of the § 3553(a) factors to determine whether they support the sentence requested by a party. In so doing, [it] may not presume that the Guidelines range is reasonable. [It] must make an individualized assessment based on the facts presented." Id. at 50 (citation and footnote omitted). Title 18, United States Code, Section 3553(a) provides, in part, that in imposing sentence, the Court shall consider:

> (1) the nature and circumstances of the offense and the history and characteristics of the defendant; [and]
>
> (2) the need for the sentence imposed--

> (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; [and]
>
> (C) to protect the public from further crimes of the defendant.

18 U.S.C. § 3553(a).

At sentencing, "the court is virtually unfettered with respect to the information it may consider." United States v. Alexander, 860 F.2d 508, 513 (2d Cir. 1988). Indeed, "[n]o 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 U.S.C. § 3661. Thus, the Court should first calculate the applicable Guidelines range, and then apply the Section 3553(a) factors to arrive at an appropriate sentence, considering all relevant facts.

III. Guidelines Calculation

The United States Probation Department's ("Probation") calculated the defendant's offense level in the PSR as follows:

Base Offense Level (§§ 2X1.1(a) and 2B1.1(a)(1))	7
More: Loss Amount Greater than $1,500,000 (2B1.1(b)(1)(I))	+16
Less: Acceptance (§§ 3E1.1(a))	-2
Less: Early Acceptance (§§ 3E1.1(b))	-1
Adjusted Total:	20

(PSR ¶¶ 27–39). Probation calculated the adjusted total offense level as 20, which, based on a criminal history category of I, carries an advisory Guidelines range of 33 to 41 months' incarceration. (Id. ¶ 70).

The government disagrees with this calculation because Probation did not apply a two-level adjustment for sophisticated means pursuant to USSG § 2B1.1(b)(10)(C). The government believes the enhancement for sophisticated means applies because of the nature of the conduct involved in the conspiracy during which fictitious client names and companies were used to defraud Bank 1 and the SBA into paying out PPP loans. U.S.S.G. § 2B1.1(b)(10) provides: "If . . . the offense otherwise involved sophisticated means and the defendant intentionally engaged in or caused the conduct constituting sophisticated means, increase by 2 levels." U.S.S.G. § 2B1.1(b)(10)(C). Application Note 9 further explains:

> For purposes of subsection (b)(10)(C), "sophisticated means" means especially complex or especially intricate offense conduct pertaining to the execution or concealment of an offense. For example, in a telemarketing scheme, locating the main office of the scheme in one jurisdiction but locating soliciting operations in

> another jurisdiction ordinarily indicates sophisticated means. Conduct such as hiding assets or transactions, or both, through the use of fictitious entities, corporate shells, or offshore financial accounts also ordinarily indicates sophisticated means.

U.S.S.G. § 2B1.1 cmt. n.9.

The scheme in its totality is sophisticated when all relevant conduct is considered. The scheme involved the defendant and numerous co-conspirators, who created the documents necessary to fraudulently apply for and receive PPP loans for various entities in this case. A certain level of sophistication is required to determine how to apply for such a loan in a manner likely to succeed, especially involving insider bank employees and, in the defendant's case, being a senior member within the bank. The defendant and her co-conspirators also knew how to recruit participants to assist in preparing the fraudulent loans. Further, by purchasing cashiers' checks to pay themselves further suggests a level of sophistication that was meant to conceal their conduct. Moreover, the defendant had specialized fraud training as part of her role at the bank and as such, her conduct should not be viewed similar to a basic fraud in a bank application, both in terms of her training, the planning of the scheme, and the scheme's execution. See United States v. Regensberg, 381 F. App'x 60, 62 (2d Cir. 2010) (finding that "repetitive conduct ... [that] demonstrates that more than routine planning was involved" constituted sophisticated means); See United States v. Jackson, 346 F.3d 22, 25 (2d Cir.2003) ("[E]ven if each step in the scheme was not elaborate, the total scheme was sophisticated in the way all the steps were linked together . . . . "); United States v. Lewis, 93 F.3d 1075, 1083 (2d Cir.1996) (holding, in tax case, that the sophisticated means enhancement applied even when "each step in the planned tax evasion was simple, [because] when viewed together, the steps comprised a plan more complex than merely filling out a false tax return."). Additionally, the documents necessary to support the PPP applications are sophisticated. As part of the conspiracy, fraudulent tax documents were prepared and provided to the loan applicants in the name of their respective corporate entity. Generating false documents sufficient to survive minimal scrutiny reflects a level of sophistication in the execution of the scheme and that the defendant was aware of how her conduct could potentially avoid detection with these tax documents in place.

Evaluating the entire scheme, all of which includes defrauding a complex disaster loan plan by the federal government, the recruitment of employees at a bank and outside accountants, the recruitment of individuals willing and eligible to submit a fraudulent loan application with a legitimate nominee business, and the creation of different supporting documents including IRS forms, all underscores that the defendant's fraudulent scheme involved sophisticated means. See Lewis, 93 F.3d at 1083. Further, the defendant does not contest the application of the sophisticated means enhancement and stipulated to it as part of the Guidelines calculations included in the plea agreement.

Taking into account the additional 2 points for sophisticated means, the government respectfully submits that the total offense level is 22, and the applicable Guidelines range is 41 to 51 months' incarceration.

IV. A Sentence of 41 to 51 Months Incarceration is Appropriate

The government respectfully submits that a sentence between 41 to 51 months' incarceration, as set forth in the plea agreement, is sufficient, but not greater than necessary, to achieve the goals of sentencing.

First, the defendant's criminal conduct in this matter is serious, as she fraudulently sought to obtain millions of dollars in pandemic-related loans offered to address emergency and disaster relief to those businesses affected by COVID-19 pandemic. Her actions warrant commensurately significant consequences, both due to the seriousness of the offense and as a general deterrent to send a message to the broader public that taking advantage of a national emergency to enrich oneself at public expense is not tolerated. The COVID-19 pandemic was among the most serious public health crises in American history and it had profound economic ramifications. The defendant's exploitation of the crisis not only cost the government and the Bank 1 time and money, but also diverted funds that could have been used the way PPP loans were intended: to assist struggling businesses and to keep people employed. Instead, the defendant took money that was earmarked for small businesses struggling and dissipated it on her own personal enrichment. Moreover, this was not a victimless crime. The PPP and EIDL programs were not a limitless pot of money. By taking money that she was not entitled to, the defendant defrauded taxpayers who helped fund the program and the SBA which guarantees these loans. As such, this selfish and destructive conduct, which through the diversion of relief money caused direct harms to a vulnerable public, demands serious punishment.

Second, a Guidelines sentence as reflected in the plea agreement is necessary to reflect the seriousness of the offense, promote respect for the law and provide general deterrence. Given that criminal conduct like the defendant's is typically difficult to detect and prosecute, there is a greater need for general deterrence. See, e.g., Harmelin v. Michigan, 501 U.S. 957, 988-89 (1991) (noting that "since deterrent effect depends not only upon the amount of the penalty but upon its certainty, crimes that are less grave but significantly more difficult to detect may warrant substantially higher penalties"). Moreover, because economic and fraud-based crimes are more rational, cool and calculated than sudden crimes of passion or opportunity, these crimes are prime candidates for general deterrence." See, e.g., United States v. Martin, 455 F.3d 1227, 1240 (11th Cir. 2006) (internal quotation marks omitted)); 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."). Here, a Guidelines sentence will help to deter other fraudsters, like the defendant, who believe that they can generate income through fraudulent schemes against government agencies during a time of crisis. Such persons should know that the decision to deceive government agencies into handing over funds allocated to assist the most vulnerable populations will result in stern consequences. This is particularly true for a person who is placed in a position of trust, as was the defendant, who worked for a bank that provided the very funds that people needed for their businesses to survive.

V. Conclusion

For the foregoing reasons, the government respectfully requests that the Court impose a sentence between 41 to 51 months' incarceration, as set forth in the plea agreement.

Respectfully submitted,

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