IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF VIRGINIA
Newport News Division

UNITED STATES OF AMERICA	)	
	)	
v.	)	CRIMINAL NO. 4:21cr71
	)	
MARLON MCKNIGHT,	)	
	)	
Defendant.	)	

POSITION OF THE UNITED STATES
WITH RESPECT TO SENTENCING FACTORS

In accordance with 18 U.S.C. § 3553(a) and the United States Sentencing Commission, *Guidelines Manual*, § 6A1.2, the United States of America, through its attorneys, Jessica D. Aber, United States Attorney for the Eastern District of Virginia, and Brian J. Samuels, Assistant United States Attorney, hereby represents that it has reviewed the Probation Office's pre-sentence report (PSR) and that it does not dispute any of the factors or facts set out therein.

Background

On November 8, 2021, the defendant, MARLON MCKNIGHT (hereinafter defendant), after having recently been prosecuted for other federal financial crimes, was charged in a ten-count indictment all related to a scheme to defraud the government for COVID-19 relief funding. Specifically, the defendant was charged with five counts of Wire Fraud, in violation of 18 U.S.C. § 1343; one count of Theft of Government Property, in violation of 18 U.S.C. § 641; and four counts of False Statements to the Small Business Administration (SBA), in violation of 18 U.S.C. § 1014. On January 18, 2022, the defendant pled guilty to Count One of the indictment, charging him with Wire Fraud, and the matter was continued for sentencing.

As the information in the PSR and the defendant's Statement of Facts reveals, the defendant's conviction stems from his conduct seeking COVID-19 government relief funds to which he was not entitled. *See generally* PSR at ¶¶ 7–22. The SBA, which provides support to small businesses, seeks to aid those businesses after disasters by assisting in their economic recovery through programs such as those established to refute the damages done by the COVID-19 pandemic. *See* PSR at ¶ 1–4. The SBA responded to the pandemic by introducing a new program called the SBA Paycheck Protection Program (PPP), which loans money to small businesses to provide a direct incentive for them to keep their employees on the payroll by forgiving all or part of the loan if all employees were kept on the payroll for eight weeks and documentation is provided to demonstrate that loan money was used for payroll, rent, mortgage interest, or utilities. PSR at ¶ 3. Another program expanded in response to the pandemic was the Economic Injury Disaster Loan (EIDL), a loan issued directly from the United States Treasury, and the proceeds of which can be used by businesses and other entities to pay fixed debts, payroll, accounts payable, and other bills which would not have occurred but for the disaster, excluding lost profit. PSR at ¶ 5–6. Applicants apply through the SBA for both types of loans and electronically certify that the information provided is accurate. PSR at ¶ 6.

On August 10, 2020, the defendant electronically applied for an EIDL (loan ending in 8205) under the company name "McKnight Cleaning Service." PSR at ¶ 7. The defendant claimed that the business opened in 2014, with an ownership start date of 2015, and responded negatively to a question asking whether he has been convicted, pled guilty, or placed on parole or probation related to any felony. PSR at ¶ 8. He listed having three employees, claimed that the gross revenue for the past year was $85,000, and indicated that the cost of goods sold was $15,000. *Id.* The defendant was offered and accepted a loan for $35,000 based on this application. PSR at ¶ 9. He received the loan through a deposit into his 1st Advantage Federal Credit Union bank account on August 13, 2020. All funds were withdrawn by September of 2020. *Id.*

On August 11, 2020, the defendant applied for a second EIDL (application ending in 2211) under the company name "KCM Property Management." PSR at ¶ 11. He listed having four employees, claimed that the gross revenue for the past year was $115,000, and indicated that the cost of goods sold was $75,000. *Id.* Again, the defendant answered in the negative to the question on the application pertaining to prior felonies. *Id.* The SBA denied this application on August 26, 2020, after the defendant failed to provide tax documentation. PSR at ¶ 12.

On January 18, 2021, the defendant filed a third EIDL application under the business name "McKnight Cleaning Services." PSR at ¶ 13. Aside from providing a different business address, this application provided the same information as his first EIDL application and the SBA subsequently informed him that it was a duplicate application. PSR at ¶¶ 13–14.

On February 7, 2021, the defendant electronically applied for a PPP loan which he submitted through the SBA for the business "McKnight Cleaning Services," requesting $35,417.50. PSR at ¶ 15. He claimed on this application that the business had five employees and intended to use the loan to cover payroll costs. *Id.* The defendant also checked "NO" and typed his initials for the loan question asking about prior felonies or convictions, guilty pleas, or parole and probation for loan fraud. PSR at ¶ 16. The defendant submitted a photograph of his Virginia driver's license and a false 2019 tax return with this application. PSR at ¶ 17. He signed the application electronically to indicate that the information provided was true and accurate and that he understood the criminal penalties associated with providing false statements to the SBA. *Id.*

Based on this evidence and the related sentencing factors, the defendant currently faces an advisory range of **21 to 27 months** for Count One and **1 to 3 years** of supervised release. This range results from an offense level total of **14/III.** The PSR attributes the defendant with more than $95,00 in losses (actual amount $115,417.50) and a two-level enhancement for fraud in connection with major disaster or emergency benefits under 18 U.S.C. § 1040.

Discussion

The United States recognizes that a sentencing court may not presume that a sentence within the advisory guideline range is reasonable; however, the guidelines remain a significant and pivotal component of the sentencing process. The Court "must first calculate the Guidelines range, and then consider what sentence is appropriate for the individual defendant in light of the statutory sentencing factors, 18 U.S.C. § 3553(a), explaining any variance from the former with reference to the latter." *Nelson v. United States*, 129 S. Ct. 890, 891-92 (2009). Title 18, United States Code, Section 3553(a)(1) provides that, in determining a sentence, courts must consider the nature and circumstances of the offense, as well as the history and characteristics of the defendant. Additional factors outlined in § 3553(a)(2) include the need for the sentence to reflect the seriousness of the offense; to promote respect for law; to provide just punishment for the offense; to afford adequate deterrence to criminal conduct; and to protect the public from the defendant's further crimes. 18 U.S.C. § 3553(a)(2)(A)-(C). The United States submits that a consideration of these factors warrants a sentence of incarceration within the advisory range.

The United States submits that this offense was serious in nature due to the defendant's repeated attempts to defraud the SBA amidst a global pandemic. The defendant clearly intended to use the money obtained from the government for his own personal gain, having the proceeds directly deposited into an account with 1st Advantage Federal Credit Union. The loan money obtained, meant for small businesses truly in financial trouble due to the COVID-19 pandemic, did not benefit any small business and in fact only benefitted the defendant himself. Furthermore, the defendant not only created false companies in an attempt to obtain these loans, but also submitted a false 2019 tax return to further the scheme.

The defendant's background admits of little mitigation. In terms of his criminal background, the defendant is a Criminal History Category III due to a past widespread federal fraud scheme in which he was essentially a mid-level manager, victimizing both banks and individuals. For this scheme, he was convicted of both Conspiracy to Commit Bank Fraud and Aggravated Identity Theft with a total loss amount of $126,800. PSR at ¶ 37. The defendant has failed to appear in court and pay fines as directed and has been undeterred by his prior encounters with the legal system.

The defendant has five children from four different women and has been in regular arrearage in support obligations owed to his various children in the amount of thousands of dollars. PSR at ¶¶ 53–56. The defendant has some college education from two different universities. In terms of work history, the defendant's history is checkered. He served in the Army but was separated in lieu of trial by court martial. PSR at ¶ 77. For eight years from 2001–2009, he was employed sporadically at various companies with intermittent periods of unemployment. PSR at ¶ 76. Since then, the defendant has worked various other jobs for a couple of years at a time, with some periods of unemployment, until his incarceration in 2018. PSR at ¶¶ 70–75. Following his incarceration, the defendant was unemployed for approximately nine months in 2021 before he began to work again. PSR at ¶¶ 68–69. The defendant is currently employed as a commercial driver. PSR at ¶ 67. The defendant has a negative net worth and has had various collection efforts against him. *See* PSR at ¶¶ 78–82.

Perhaps what is most aggravating about this case is that the defendant began and committed this fraud on initial release into a halfway house in August 2020 from his prior federal fraud conviction. After being sent back to prison in the fall of 2020, he was ultimately released again in January 2021 and went right back to the fraud. This was after being sentenced to 30 months by this Court in criminal case no. 4:17cr118, which was a below guideline sentence (the original range had been 40-48 month). The defendant and his co-defendant wife were permitted to serve their sentences in staggered fashion due to the impact on their children. Rather than taking anything from this lenient treatment on a considerable fraud, the defendant immediately returned to fraudulent conduct aimed at exploiting the government's efforts to get funds in the hands of people who were truly needy and deserving.

To this, the defendant claims he was under peer pressure and "everyone else was doing it in prison and at the Halfway House." He then claims that he used this money to get back on his feet, so that the "loan money was used for exactly the purpose for which the loans were designed." ECF No. 27. These claims represent an astonishing effort to justify the unjustifiable. The defendant took money designed to help those businesses affected by the pandemic -rather than getting a job, or taking the right path, he took a fraudulent shortcut to benefit himself. The government submits that these circumstances are egregious and warrant a significant sentence of incarceration. Obviously, his prior lenient sentence of 30 months did little to cause this defendant to appreciate the severity of his prior criminal conduct.

His request for a variance sentence of home confinement further illustrates how little selfawareness he has achieved. To provide such a sentence would send the appalling message that if you are given a second chance (as this Court gave the defendant) and you refuse to mend your ways, you can keep refusing to do so with minor consequences. How can the Court have any confidence that the defendant will not re-offend in such a scenario? There is an expression that we encourage what we tolerate – such would be the lesson taken by the defendant were he to receive a sentence of home confinement.

The United States submits that other important statutory factors to be addressed in this case are the need to provide just punishment for the defendant's offense, to protect the public, to promote respect for the law, and to deter the defendant and others similarly situated. The instant offense involved repeated attempts to commit fraud against pandemic relief programs sponsored by the government through the SBA. The scope and seriousness of the offense is certainly deserving of just punishment. Coupled with the defendant's history and characteristics, it also evinces a need to protect the public from future crimes committed by this defendant.

The sentence imposed should also promote respect for the law and afford adequate deterrence—both to the defendant and to others similarly situated. The defendant's prior encounters with law enforcement, even for other activity involving fraud, have not deterred him from criminal conduct. Moreover, deterrence under Section 3553(a) is not limited to the necessary sentence to deter the defendant from engaging in further criminal conduct (specific deterrence), but also includes consideration of deterring other potential criminals from engaging in similar conduct (general deterrence). *United States v. Phinazee*, 515 F.3d 511, 515-16 (6th Cir. 2008). "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.'" *United States v. Martin*, 455 F.3d 1227, 1240 (11th Cir. 2006). A sentence within the advisory guideline range would send a significant message to individuals in the United States that participate in these identity theft scheme at any level in an effort to benefit financially.

Conclusion

For the foregoing reasons, then, the United States submits that a review of Section 3553(a) factors fully supports a sentence within the advisory guideline sentence. Such a sentence appropriately reflects the gravity of the defendant's crimes and the loss sustained by the government for the defendant's personal gain. Such a sentence is justified to deter and punish the defendant for his criminal conduct.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on the 30th day of June, 2022, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system, which will send a notification of such filing (NEF) to the following:

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And I hereby certify that I have served the document by electronic mail to the following non-filing user:

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