

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

UNITED STATES OF AMERICA

v.

KENNETH L. WRIGHT, JR.

Criminal Action No.

1:20-CR-285-LMM

The Government's Sentencing Memorandum

The United States of America, by Byung J. Pak, United States Attorney, and Diane C. Schulman, Special Assistant United States Attorney for the Northern District of Georgia, files this Sentencing Memorandum.

At the January 8, 2020 sentencing hearing, the Government will recommend a loss amount of more than \$550,000 and less than \$1,500,000 and a sentence at the low end of the guideline range.

1. Background

On August 3, 2020, Defendant was charged in a criminal information with one count conspiracy in violation of Title 18, United States Code, Section 371, and one count false statements in violation of Title 18, United States Code, Section 1001. (Doc 1). These charges arose from Defendant's fraudulent application for and submission of a PPP loan for his business Lux Realty, and subsequent receipt of a \$300,000 loan. Defendant's application included fraudulent 941 quarterly tax returns and fraudulent statements that he had 16 employees and monthly wages

of \$120,000. Defendant electronically signed and submitted the loan application on May 5, 2020.

Defendant's loan and application were discovered in connection with an investigation that found several businesses that all submitted fraudulent loan applications with identical fraudulent information, and all received \$300,000 PPP loans. In fact, the investigation uncovered a second \$300,000 loan that Defendant received for Lux Automotive, another business he owned. This application was identical to the Lux Realty loan application in all aspects, except Defendant did not electronically sign the application. Instead, he noted "I don't accept based on these terms." Nonetheless, he submitted the loan application on June 30, 2020, and the loan was funded on July 7, 2020. Defendant received another \$300,000 for the Lux Automotive business entity.

On August 20, 2020, Defendant pleaded guilty to both counts pursuant to a negotiated plea. (Doc. 6). The PSR found the loss amount attributable to Defendant's charged conduct and relevant conduct to be more than \$550,000 and less than \$1,500,000 and assessed a 14-level enhancement. Considering the base offense level, all enhancements and acceptance of responsibility, the PSR concluded that Defendant has a total offense level of 17 with a custody guideline range of 24-30 months.

II. The Appropriate Loss amount is \$600,000.

Defendant is charged with conduct related to the loan obtained for Lux Realty, not with conduct related to the loan obtained for Lux Automotive. However, the guidelines always require the consideration of relevant conduct

when determining the appropriate sentencing range. Relevant conduct is defined as “all acts and omissions committed, aided, abetted, counseled, commanded, induced, procured, or willfully caused by the defendant...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.” See U.S.S.G. § 1B1.3(a)(1)(A). In considering whether uncharged conduct is relevant, the Court should evaluate the similarity, regularity, and temporal proximity between the counts of conviction and uncharged conduct. See *United States v. Myles*, 314 F. App’x 164, 168 (11th Cir. 2008) (citing *United States v. Maxwell*, 34 F.3d 1006, 1011 (11th Cir. 1994)). Here, the fraudulent information used to support the Lux Automotive loan application was identical to the fraudulent information used to support the Lux Automotive loan. Moreover, Defendant applied for the Lux Automotive loan two months after he received the Lux Realty loan. Thus, there should be no question that the Lux Automotive loan is relevant conduct.

Defendant objects to the inclusion of the Lux Automotive loan in the calculation of his loss amount on two grounds: (1) because he technically did not sign the application, and (2) because the government was able to recover the entire \$300,000 through seizure.

In response, the Government notes that, while it is true that Defendant did not technically sign the loan application, he did submit it. Certainly, if he did not want the loan, he could have not submitted the loan application rather than submit it with a disclaimer. Moreover, once the loan was approved and

deposited into his account, he did not contact the bank to return the funds or to report that he did intend to receive the loan proceeds.

To the extent that Defendant claims that the loss should not include the Lux Automotive loan because the Government was able to recover that loan, the Court should reject this argument. The guidelines are clear that loss is to be calculated as the great of actual or intended loss. *See* U.S.S.G. § 2B1.1 App. Nte. 3(A). “Intended loss” means the “pecuniary harm that the defendant purposely sought to inflict; and includes intended pecuniary harm that would have been impossible or unlikely to occur.” U.S.S.G. § 2B1.1 App. Nte. 3(A)(i). Here, Defendant purposely submitted a fraudulent loan application, and received the loan. The fact that the Government was able to recover the entire loan amount through its own legal process should not impact the calculation of loss for guideline purposes. It impacts only the calculation of restitution.

The Government acknowledges that, in the plea agreement, the Government agreed to limit the loss amount to the \$300,000 loan Defendant received for Lux Realty. This limitation was conditioned on Defendant’s assertion that he had not, and would not, spend or use the funds from the Lux Automotive loan in any way. As will be discussed further at the sentencing hearing, Defendant did not live up to his end of the deal.

In fact, after Defendant pled guilty the Government learned that Defendant moved the money around in a suspicious manner making it difficult to trace. While the Government was able to recover the entire amount of the loan, it appears that other funds obtained through yet another fraudulent PPP loan was

deposited into the same bank account where the Lux Automotive loan was deposited. Thus, we cannot say that he did not spend any of the proceeds from the Lux Automotive loan. Because Defendant was not truthful with the Government, the Government can no longer agree to limit his loss to the Lux Realty loan. Therefore, the Government asserts that the appropriate loss amount is \$600,000 and the 14-level enhancement was properly applied.

III. A guideline sentence is appropriate.

Considering the 3553a factors, a guideline sentence is appropriate. Defendant's conduct warrants a custodial sentence because of the nature and circumstance of the offense. Defendant's crime could not be a more egregious fraud case. During a pandemic, Defendant stole money intended for legitimate businesses struggling to survive in the midst of the public health emergency. The PPP was a much-needed lifesaver for legitimate businesses throughout the country. Defendant put his own self-interest above the needs of the public. Thus, because of the nature of the conduct, a guideline sentence is appropriate.

A guideline sentence is also appropriate because of the history and characteristics of this Defendant. As will be more fully discussed at the sentencing hearing, Defendant's conduct throughout these proceedings have shown the Government that he is not deserving of anything less than a guideline sentence.

In addition to the serious conduct that defendant was charged with and pleaded guilty to, further investigation into Defendant has only raised more questions and uncovered more potential fraud. For example, Defendant told

pre-trial services that he lives at 222 Alderwood Place in Atlanta, Georgia, an address he claimed his “godbrother” and roommate J.R. owned, when in fact, he co-owns the property with J.R. But it is not clear that Defendant lives at the Alderwood Place address. The Government learned that Defendant is named on a lease for a property at 3566 Roswell Road. The Government’s investigation determined that Defendant rented the property at 3566 Roswell Road using a stolen identity. He also used funds from the Lux Realty PPP loan to pay the rent on the 3566 Roswell Road address.

The Government has also learned of other fraudulent activity involving Defendant. Specifically, Defendant’s “godbrother” and roommate J.R. received a PPP loan based on an apparent fraudulent application. Defendant received money from that loan. Additionally, Defendant and another associate submitted fraudulent information in order to qualify for car loans for the Lux Automotive entity.

In short, Defendant has shown that he is a committed fraudster. Nothing less than a low-end guideline sentence is appropriate.

Conclusion

The Government requests that Defendant be sentenced at the low end of the Guidelines.

Respectfully submitted,

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Brandon Lewis

January 5, 2021

/s/ DIANE C. SCHULMAN

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