

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

UNITED STATES OF AMERICA,

Plaintiff,

v.

Case No. 20-CR-199

DEON PETTY,

Defendant.

GOVERNMENT'S SENTENCING MEMORANDUM

Deon Petty ("the Defendant") received a fraudulent \$155,000 Paycheck Protection Program ("PPP") for his company, Rebels Paris. For his conduct, the Defendant faces a guideline sentencing range of 18-24 months' incarceration as recommended by the Plea Agreement (Dkt. 4) and the Presentence Investigation Report (Dkt. 16) and a statutory maximum sentence of 5 years' incarceration. In light of the factors in 18 U.S.C. § 3553 and for the reasons set for below, the United States respectfully requests that this Court impose a term of imprisonment at the bottom of the United States Sentencing Guidelines (the "Guidelines" or "U.S.S.G.") range, two years of supervised release, and order the Defendant to pay \$85,000 in restitution.

I. OVERVIEW OF *UNITED STATES V. THOMAS SMITH, ET AL.*

The Defendant was one of the related defendants in the government's prosecution in *United States v. Thomas Smith, et al.*, which involved charges of bank fraud conspiracy and money laundering against five individuals. All of the charged conduct

took place in the spring and summer of 2020. As described more fully in the Indictment and plea agreements associated with each of the defendants, the defendants obtained fraudulent PPP loans from a bank using false and fraudulent application materials. *See* Dkt. Nos 1, 5, 38, 42, 53, 73. In addition to the five defendants charged in the Indictment, three other defendants, including the Defendant, were charged by Information for their part of the scheme. *See United States v. Tarone Woods*, 20 CR 197; *United States v. Marvin Fitzgerald*, 20 CR 202. In total, the scheme sought over \$1 million in government funds for employees (and sometimes businesses) that did not exist. Proceeds of the fraud were shared among co-defendants. Some of the defendants also coordinated the false statements they planned to provide law enforcement, if approached, to try to conceal their crimes.

II. OVERVIEW OF UNITED STATES V. DEON PETTY

A more detailed recitation of the facts relating to the scheme are detailed in the Defendant's plea agreement (Dkt No. 4), the plea agreements of the related defendants in the case, the PSR, and the government's submission regarding restitution. (Dkt. No. 15.)

In May 2020, Marvin Fitzgerald introduced the Defendant to Thomas Smith and Stephen Smith in order to get a PPP loan for Petty's company, Rebels Paris. Rebels Paris, while a functioning company, did not have any employees or payroll, and thus was not eligible for a PPP loan. Stephen Smith directed the Defendant to open a business checking account at Financial Institution 1 in order to apply for the loan. Stephen Smith and Thomas Smith prepared the loan paperwork, which included false

assertions that Rebels Paris had employees and payroll. They also prepared fake tax returns to submit in support of the false statements. The Defendant signed the loan application and delivered it to Financial Institution 1.

Before submitting the loan application, the Defendant agreed to pay Stephen Smith and Thomas Smith part of the loan proceeds for creating the loan application paperwork. After the Rebels Paris loan was funded, the Defendant paid \$30,000 to Stephen Smith from the loan proceeds. The Defendant also transferred loan proceeds to Thomas Smith through cashier's checks to two of his entities totaling \$45,000. Finally, the Defendant paid \$20,000 of the loan proceeds to Fitzgerald.

In June 2020, Financial Institution 1 froze the account of the Defendant and his co-schemers after it determined that the loan may have been fraudulent. After the accounts were frozen, the Defendant also participated in a conversation with Thomas Smith, Stephen Smith, and Fitzgerald to come up with a consistent story to tell the bank to conceal the fact that they had submitted a fraudulent application. When a representative from Financial Institution 1 later called the Defendant, the Defendant lied to the representative about the payments and about the employees and payroll of Rebels Paris.

III. PROCEDURAL HISTORY

A more detailed recitation of the procedural history of this case and the related cases can be found in the Government's Position on Restitution. (Dkt. 15.) On October 27, 2020, the Defendant was charged with conspiracy to defraud the United States, in violation of Title 18, United States Code, Section 371. (Dkt. 1.) The

Defendant pled guilty before Judge Adelman to the Information pursuant to a written plea agreement on November 10, 2020. (Dkt. 2.) On December 1, 2020, the Defendant's case was reassigned to this Court after it was found to be related to *United States v. Smith, et. al.* cases. (Dkt. 9.) Sentencing is scheduled for June 3, 2021.

IV. SENTENCING GUIDELINES CALCULATIONS

The United States agrees with the Probation Office's calculation of the Guidelines in this case. The Final Presentence Investigation Report, filed on June 2, 2021, determined that the total offense level was 15 and that the Defendant's criminal history category was I, which corresponds to an advisory Guidelines range of 18 to 24 months' imprisonment. (PSR at ¶ 75.) The Probation Officer found that the Defendant was subject to a Base Offense Level of six under U.S.S.G. § 2B1.1(a)(2). (*Id.* at ¶ 32.) The Defendant then received a 10-level enhancement for a loss exceeding \$150,000 but less than \$250,000 under U.S.S.G. § 2B1.1(b)(1)(F). (*Id.* at ¶ 32.) The Defendant received a two-level enhancement because the offense involved sophisticated means under U.S.S.G. §2B1.1(b)(10)(C). (*Id.* at ¶ 32.)

The parties and the Probation Office agree that the Defendant is entitled to a two-level reduction for acceptance of responsibility. The Defendant has assisted authorities in the investigation and prosecution of his own misconduct by pleading guilty prior to indictment, thereby permitting the United States to avoid preparing for trial and permitting the United States and the Court to allocate their resources efficiently. Therefore, the United States moves the Court, under Section 3E1.1(b), to grant the Defendant an additional one-level reduction in the offense level for acceptance of

responsibility if the Defendant receives the two-level reduction for acceptance of responsibility.

With a Total Offense Level as Level 15, and a Criminal History Category of I, the Sentencing Guidelines recommend a sentence between 18- and 24-months' imprisonment. The United States agrees with the PSR's Guidelines' Calculations and has no corrections to the PSR.

V. CONSIDERATION OF FACTORS UNDER SECTION 3553(A)

A. Nature and Circumstances of the Offense

The Defendant participated in serious criminal conduct and deserves to be punished for his choices. In 2020, as the COVID-19 pandemic spread across the country causing death and economic distress, the government created PPP loans to help small businesses whose livelihoods were jeopardized. The Defendant, who owned a business that did not have any employees or payroll, took advantage of the program by submitting a false application claiming to have employees and payroll that did not exist. His application was supported by false tax forms. Furthermore, upon being discovered by the bank, the Defendant chose to continue going along with the scheme by trying to conceal his conduct. He told multiple lies to the bank about the state of Rebels Paris and his payments to Thomas Smith, Stephen Smith, and Fitzgerald.

Though the Defendant's conduct was serious, there are some mitigating factors to consider. The Defendant's role in the scheme was significantly less than Thomas and Stephen Smith. The Defendant was recruited to the scheme by Stephen Smith. Furthermore, though he willingly passed on the falsified documents, the Defendant did

not create any of the loan paperwork or fake tax documents. When he made the false statements to Financial Institution 1 with the cover story, he was passing along what Thomas Smith and Stephen Smith told him to say to try to keep all of them out of trouble.

Furthermore, unlike many of his co-schemers, the Defendant's company, Rebels Paris, was a legitimate enterprise which was actually operating and creating revenue at the time he applied for the fraudulent loan. The lie in his case was a narrower one than for some of the others involved in the scheme – he had a business, but just did not have a group of employees he needed PPP money to pay. While the Defendant's actions included false statements to the government, based on his statements during the investigation, he committed this offense due to a desire to help his business. This supports a sentence at the bottom of the Guidelines. *See e.g. United States v. Eggleston*, 347 F.Supp.3d 381, 384 (E.D. Wisc. 2018) (in bank fraud case, noting as a mitigating factor that embezzlement offense was committed to support business rather than for personal enrichment).

B. History and Characteristics of the Defendant

The Defendant is a 29-year-old man who is in good health. (PSR ¶ 51, 61.) While the Defendant grew up in a neighborhood that he reported to have “a number of negative influences,” he grew up in a stable family and has close relationships with his family members. (*Id.* ¶ 52-54.) The Defendant has two children, who he reports being close to. (*Id.* ¶ 59.) He founded Rebels Paris in 2016 and has supported himself through

the business since that time. (*Id.* ¶ 67.) The Defendant has no criminal history. (*Id.* ¶ 45.)

The Defendant agreed to plead guilty before being indicted, and thus deserves credit for accepting responsibility early and saving the government considerable resources in preparing for trial.

C. Need for the Sentence to Afford Adequate Deterrence to Criminal Conduct

The government believes a that a sentence at the bottom of the Guidelines is appropriate for both specific and general deterrence. The sentence in this case should send a clear message to the Defendant and other offenders that there are serious consequences for defrauding government pandemic relief programs. Indeed, as the pandemic continues to impact small businesses, the PPP loan program remains ongoing. Actors like the Defendant who seek to defraud these programs make it more difficult for administrators of government and other relief programs to get aid to individuals that qualify for and need it. The Defendant's sentence should serve as a warning and deterrent to others inclined to exploit pandemic relief programs.

A term of imprisonment may also be necessary to specifically deter the Defendant from engaging in criminal conduct in the future. After he was involved in the fraudulent PPP loan, he sought out yet another loan through the SBA EIDL program in June 2020. While it seems that he did not know what exactly he was applying for at the time, and he didn't submit the application, the Defendant should have known better after his experience with the PPP loan. The fact that he continued to seek out "free money" without asking questions after the fraudulent PPP loan had been questioned by

Financial Institution 1 suggests that the Defendant was not deterred upon being discovered. Despite this, the Defendant has no criminal record and his behavior in the spring and summer of 2020 does appear to be an aberration.

D. Need for the Sentence to Avoid Unwarranted Sentencing Disparities

There are two relevant points of comparison to avoid unwarranted sentencing disparities: sentences associated with others convicted of PPP related fraud, and those in this case. Around the country, only a few defendants have been sentenced to date for PPP related frauds, but those courts have imposed meaningful jail sentences in similar cases. *See, e.g., United States v. David Hines*, 21-CR-20011, S.D.FL. (imposing 78-month sentence on an individual who fraudulently applied for multiple PPP loans with a loss of \$3.9 million and also assisted others in submitting fraudulent PPP loans); *United States v. Ganell Tubbs*, 20-CR-193, E.D.AR (imposing 41-month sentence on an individual who fraudulently applied for two PPP loans with a loss of \$1.9 million); *United States v. Tarik Jaafar*, 20-CR-185, E.D.V.A. (imposing 12-month sentence on an individual who fraudulently applied for 18 PPP loans with a loss of \$1.4 million); *United States v. Zhang*, 20-CR-169, W.D.W.A. (imposing 60 day sentence on an individual who fraudulently applied for multiple COVID-19 relief program loans, including four PPP loans with a loss of over \$900,000).

The government submits that a sentence at the low end of the Guidelines is also appropriate when comparing the Defendant's role to others involved in the scheme. The Defendant is significantly less culpable than Thomas and Stephen Smith. The Defendant recruited into the scheme by Stephen Smith, who was seeking out

individuals with companies to submit these fraudulent loans. He did not fill out any of the applications or create false documents like the Thomas or Stephen Smith. Finally, unlike Thomas and Stephen Smith, the Defendant was not involved in the creation or direction of the scheme.

VI. RESTITUTION & FORFEITURE

The government incorporates its Position on Restitution for Sentencing, filed on April 13, 2021 at Docket No. 15. For the reasons explained in that submission, the Defendant should be ordered to pay \$85,000 in restitution.

The government is not seeking a separate forfeiture judgment against the Defendant.

* * *

For the reasons stated above, the United States respectfully requests that the Court impose a term of imprisonment at the bottom end of the Guidelines, a two-year term of supervised release, and order the Defendant to pay \$85,000 in restitution. The United States submits that this sentence is sufficient, but not greater than necessary, to satisfy the purposes of sentencing.

Respectfully Submitted,

DANIEL KAHN
Acting Chief, Fraud Section
U.S. Department of Justice

s/Laura Connelly _____
LAURA CONNELLY
LESLIE S. GARTHWAITE
Trial Attorneys
Fraud Section
U.S. Department of Justice
1400 New York Ave. NW
Washington, DC 20005
Phone: 202-307-1423
laura.connelly@usdoj.gov

CERTIFICATE OF SERVICE

I hereby certify that on June 3, 2021, I caused the foregoing to be electronically filed with the Clerk of the Court using the CM/ECF system, which will provide copies to counsel for all parties.

*/s Laura Connelly*_____

LAURA CONNELLY
LESLIE S. GARTHWAITE
Trial Attorneys
Fraud Section
U.S. Department of Justice