

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

UNITED STATES OF AMERICA,

Plaintiff,

v.

Case No. 20-CR-202

MARVIN FITZGERALD,

Defendant.

GOVERNMENT’S SENTENCING MEMORANDUM

Marvin Fitzgerald (“the Defendant”) lied to law enforcement agents about his involvement a scheme to defraud the Paycheck Protection Program (“PPP”). For his conduct, the Defendant faces a guideline sentencing range of 0-6 months’ incarceration as recommended by the Plea Agreement (Dkt. 2) and the Presentence Investigation Report¹ (“PSR”) 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 probation of three years, at the bottom of the United States Sentencing Guidelines (the “Guidelines” or “U.S.S.G.”) range, and order the Defendant to pay \$20,000 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

¹ At the time of the government’s filing, the final PSR had not been filed with the Court. Neither party had objections to the Draft PSR. Therefore, for purposes of this filing, the government cites to the Draft PSR it received on March 4, 2021.

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 individuals, 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. Deon Petty*, 20-CR-199. 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. MARVIN FITZGERALD

A more detailed recitation of the facts relating to the scheme are detailed in the Defendant's plea agreement (Dkt No. 2), the plea agreements of the related defendants in the case, the PSR, and the government's submission regarding restitution. (Dkt. No. 17.)

In May 2020, the Defendant was approached by Stephen Smith, who offered to make him the owner of New Beginnings Family Services, LLC ("New Beginnings"), Stephen Smith's defunct company. Stephen Smith told the Defendant that they could get a loan to get the company restarted. Soon after, paperwork was filed with the State of Wisconsin restoring the company to good standing and naming the Defendant as the

registered agent of New Beginnings. At Stephen Smith's direction, the Defendant opened a bank account for New Beginnings at Financial Institution 1. Stephen Smith then created a fraudulent PPP loan application package for New Beginnings, including fake tax documents, and gave it to the Defendant. The Defendant submitted the fraudulent loan paperwork to Financial Institution 1, without signing it or reviewing it. Financial Institution 1 declined the loan. It was not until Financial Institution 1 froze the accounts of the Defendant's co-schemers, and Stephen Smith provided the Defendant with a copy of the New Beginnings loan paperwork, that the Defendant learned that the application contained false statements.

Around the same time, Stephen Smith asked the Defendant if he knew anyone who had a limited liability company. The Defendant introduced Stephen Smith to his roommate, Deon Petty, who owned Rebels Paris. Rebels Paris was a clothing company that had revenue but did not have any employees or payroll. While the Defendant did not have any involvement in the submission of the Rebels Paris application, Petty provided him with \$20,000 of the loan proceeds after it was funded.

The Defendant also received \$10,000 from the SBA's Economic Injury Disaster Loan ("EIDL") program for a fake sole proprietorship in the Defendant's name. The EIDL program was an SBA program that provided low-interest financing to small businesses, renters, and homeowners in regions affected by declared disasters. Due to the pandemic, the SBA was authorized to issue advances of up to \$10,000 to small businesses within three days of applying for an EIDL. Applicants applied to the SBA directly for the funding. Before receiving the \$10,000 advance, the Defendant provided

his personal information to Petty, who passed along the information to an unknown individual to apply for the advance. The Defendant did not submit the loan application and never saw the loan application.

Despite his knowledge of the scheme, when approached by law enforcement about the scheme, the Defendant repeatedly lied to agents. He falsely told agents that he had backed out of the deal to get a New Beginnings loan, gave a false name for the person that approached him to get a loan, and denied opening a bank account for New Beginnings.

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. 17.) On November 2, 2020, the Defendant was charged by Information with making false statements to a law enforcement officer, in violation of Title 18, United States Code, Section 1001. (Dkt. 1.) The Defendant pled guilty to the Information pursuant to a written plea agreement on December 9, 2020. (Dkt. 2.) 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 PSR determined that the total offense level was 4 and that the Defendant's criminal history category was I, which corresponds to an advisory Guidelines range of 0 to 6 months' imprisonment. (PSR at ¶ 89.) The Probation Officer

found that the Defendant was subject to a Base Offense Level of 6 under U.S.S.G. § 2B1.1(a)(2). (*Id.* at ¶ 23.) There were no offense related enhancements.

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.

With a Total Offense Level as Level 4, and a Criminal History Category of I, the Sentencing Guidelines recommend a sentence between 0- and 6-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

There is no doubt that making false statements to law enforcement is a serious offense. The Defendant, in two separate conversations with law enforcement, attempted to conceal his knowledge of the scheme that Stephen Smith and Thomas Smith had concocted. He denied any involvement with the New Beginnings applications, aside from turning down an offer from a fictitious individual to apply for it.

The fact that the Defendant was involved with three separate fraudulent loan applications makes his offense even more serious. While he was not charged with fraudulently submitting loan applications, the Defendant certainly acted improperly in

involving himself in them. It is clear that the Defendant was looking for easy money in the pandemic, and he did not ask the right – or for that fact any – questions about where this money was coming from and why he was entitled to it.

B. History and Characteristics of the Defendant

The Defendant is a 30-year-old man who is in good health. (PSR ¶¶ 58, 68.) While the Defendant grew up in a “challenging neighborhood,” he grew up in a stable family and has close relationships with his family. (*Id.* ¶¶ 58-66.) The Defendant was a gifted basketball player growing up, which he attributed to feeling “safe and protected in his community.” (*Id.* ¶ 66.) The Defendant graduated college in 2013 and would like to pursue a Master’s Degree in Social Work. (*Id.* ¶¶ 77, 78.) The Defendant currently works full time as a technician for a telecommunications company. (*Id.* ¶ 79.) He also works part time a substitute teacher, but he has not worked in this role since the start of the pandemic. (*Id.* ¶ 80.) The Defendant has no criminal history. (*Id.* ¶ 53.)

The Defendant deserves credit for accepting responsibility early, before being indicted, 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 probationary sentence in this case is appropriate for both specific and general deterrence. The Defendant has no criminal record and appears to have been significantly impacted by pleading to a felony. (PSR ¶ 70.) That being said, the government submits that the Defendant should be subject to supervision for a lengthy period to ensure that he does not engage in this type of behavior in the future.

D. Need for the Sentence to Avoid Unwarranted Sentencing Disparities

The government submits that a probationary sentence is also appropriate when comparing the Defendant's role to others involved in the scheme. The Defendant was recruited into the scheme by his mentor, Stephen Smith, who he had known and trusted since childhood. He thought that Stephen Smith was providing him with an opportunity in allowing him to rebuild New Beginnings. While there is no doubt that the Defendant should have asked more questions and been more skeptical about the arrangement, it cannot be overlooked that Stephen Smith took advantage of their relationship and the Defendant's trust in him. Furthermore, Stephen Smith used the Defendant to submit the New Beginnings loan because Stephen Smith had already applied for and received a fraudulent loan for his other company, CFA. Stephen Smith did not want to submit a second application in his name.

Furthermore, the Defendant did not fill out any of the applications or create false documents like the leaders of the scheme. He also never spoke to anyone at the bank, so made no false statements to the bank directly. He did not even sign the loan application for New Beginnings. 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. 17. For the reasons explained in that submission, the Defendant should be ordered to pay \$20,000 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 three-year term of probation and order the Defendant to pay \$20,000 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 _____
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CERTIFICATE OF SERVICE

I hereby certify that on May 27, 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*_____

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