

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF ARKANSAS
HARRISON DIVISION

UNITED STATES OF AMERICA)
) No. 3:21CR30002-PKH-001
v.)
)
CRYSTAL PAYNE)

UNITED STATES’ SENTENCING MEMORANDUM

The United States of America, by and through David Clay Fowlkes, Acting United States Attorney for the Western District of Arkansas, and the undersigned Assistant United States Attorney, states its position on the forthcoming sentencing and outstanding objections to the Pre-Sentence Report, *Doc. No. 16* (“PSR”).

BACKGROUND

After pleading guilty to a one-count Information stemming from her filing fraudulent applications for SBA-backed loans, Payne is set for sentencing before this Court on July 7, 2021. The United States files this sentencing memorandum to address the pending objections and the 18 U.S.C. § 3553(a) factors for the Court’s consideration.

ARGUMENT

1. Objections to Loss Amount

The United States contends that the loss Payne intended to cause should drive the Guidelines calculation. The general rule is to apply the greater of actual or intended loss. U.S.S.G. § 2B1.1(commentary note 3(A)). Intended loss is “the pecuniary harm that the defendant purposely sought to inflict” and even includes “pecuniary harm *that would have been impossible or unlikely to occur.*” *Id.* (emphasis added).

Payne, with her husband's help, completed loan applications using false income data in hopes of obtaining large loans. Unequivocally, Payne and her husband provided the data that drove the requested loan amounts. At times, the banks gave less than Payne asked for, were limited by law in the amount they could give, or denied the loan altogether. Thus, as the addendum to the PSR rightfully notes, the full intended loss amount in this case carries some complications. Because some of the loan applications were summarily denied by the banks, the Government did not seek further details about those applications. But nonetheless, the ascertainable intended loss amount still eclipses the actual loss, and the United States submits it is therefore the appropriate measure in this case.

2. Sentencing Factors.

To arrive at a just sentence, the statute directs the Court to consider the familiar factors at 18 U.S.C. § 3553(a). When the facts of Payne's offense conduct are applied to those criteria, a sentence within the Guidelines Range is merited.

a. Nature and Circumstances of the Offense and the History and Characteristics of the Defendant. (18 U.S.C. § 3553(a)(1)).

The Coronavirus pandemic has claimed more than half a million American lives, affected the mental and physical health of millions more, and led to widespread unemployment and financial hardship. For others, like Payne, it presented a prime opportunity to steal money the U.S. Government earmarked for those most in need.

In Payne's favor, her husband was the driver of the criminal conduct in this case. It hardly absolves Payne's crimes, but it's worth noting that her husband created the false documents and bogus information that was input into the loan applications. However, the loan application information was so outlandish that any question of the propriety of the loans was obvious immediately. Payne played along and enjoyed the profits. The loan at the center of this conviction,

for instance, involved representations by Payne that she maintained a stitching business with \$53,642 in monthly payroll. But that one application wasn't an aberration. Over the course of months, Payne continued to sign off on loan applications and receive unemployment funds without issue. She received large amounts of cash, nearly \$60,000 over a few months, into accounts under her control. *PSR at 118.*

While her role in the offense relative to her husband may be a mitigating factor, it's tempered by the variety of the schemes to which Payne was a party, and the knowledge that the stolen funds were intended for the most vulnerable among us. Accordingly, the Government seeks a sentence within the Guidelines Range.

- b. The Need for the Sentence Imposed to Reflect the Seriousness of the Offense, To Promote Respect for the Law, and to Provide Just Punishment for the Offense. (18 U.S.C. § 3553(a)(2)(A)); The Need for the Sentence Imposed to Afford Adequate Deterrence To Criminal Conduct and Protect the Public from Further Crimes. (18 U.S.C. § 3553(a)(2)(B-C)).*

Payne's lack of criminal history cuts in her favor. The PSR represents that she has not only no convictions, but no serious law enforcement contact. She timely accepted responsibility for her actions too. She and her husband will inherit serious restitution obligations as part of this offense, and based on the provided financial information, that may take a lifetime to pay. Accordingly, the United States requests a sentence that reflects these factors, while balancing just punishment and promoting respect for the law. While it is unlikely that Payne will commit future crime, the Government asks that the Court impose a sentence that considers general deterrence to the public, and to those who might contemplate taking advantage of the PPP loan program.

CONCLUSION

Considering the factors set forth at 18 U.S.C. § 3553(a), the United States respectfully requests the Court impose a Guidelines sentence, one that reflects the concerns outlined above.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Hunter Bridges, hereby certify that on June 16, 2021, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF System which will send notice to the following:

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