

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TENNESSEE
AT KNOXVILLE

UNITED STATES OF AMERICA,
Plaintiff,

v.

PORSHA TIMS BUSH,
Defendant.

No. 3:21-cr-74

Judge Crytzer

**UNITED STATES' SENTENCING MEMORANDUM AND RESPONSE
TO DEFENDANT'S OBJECTIONS TO THE PRESENTENCE REPORT**

The sentencing factors in 18 U.S.C. § 3553(a) and defendant's post-plea conduct support a sentence above the guideline range.¹ The Court should also impose a within-guideline three-year term of supervised release and a within-guideline fine of \$15,000 to \$150,000. Moreover, defendant's objections to the presentence report should be overruled.

I. Introduction

Defendant submitted ten fraudulent loan applications seeking Covid-19 relief funds on behalf of six different companies, resulting in a total intended loss amount of \$547,286. [*See generally* R. 3, Plea Agreement ¶ 4(ddd).] Defendant pleaded guilty to one count of wire fraud. [*Id.* ¶ 1(a).] Based in part on the agreed loss amount, and on probation's recommendation that defendant receive a three-level reduction for acceptance of responsibility, probation calculated a guidelines range of 33 to 41 months' imprisonment. [R. 19 (Sealed) Presentence Investigation Report ("PSR") ¶ 122.] Defendant's sentencing hearing is currently scheduled for February 24, 2022. [R. 22, Order at 2.]

¹ The United States intends to file a motion for a seven-day extension to file a motion for an upward variance. *See* E.D. Tenn. L.R. 83.9(j) (stating that a motion for an upward variance must be filed fourteen days before the sentencing hearing).

II. Relevant Facts

Defendant submitted ten fraudulent loan applications seeking Covid-19 relief funds on behalf of six companies she owned or claimed to own. [R. 3, Plea Agreement ¶¶ 4(c)-(e), (ddd).] Each of the fraudulent applications included misrepresentations about the number of employees, gross revenue, income, monthly wages, or employment taxes. [See e.g., *id.* ¶ 4(s), (ff), (hh), (rr).] The fraudulent loan applications were approved by the Small Business Administration and various financial institutions, and defendant received approximately \$500,000 in Covid-19 relief funds to which the companies were not entitled. [*Id.* ¶ 4(ddd) (summarizing all fraudulent loan applications) & ¶ 8 n.1 (explaining that one of the fraudulent applications for \$61,915 was denied).] Defendant accomplished the fraud in part by submitting fabricated Internal Revenue Service tax-return documents that falsely claimed the companies employed multiple employees and paid quarterly wages. [See, e.g., *id.* ¶ 4(y) (Form 941); ¶ 4(gg) (Form 940); ¶ 4(ii) (Form 1040, Schedule C); ¶ 4(mm) (Form 1099-MISC); ¶ 4(oo) (Form 941).]

Defendant then attempted to conceal the fraudulent proceeds by transferring them among various bank accounts she created for that exact purpose. [*Id.* ¶ 4(aa).] For example, defendant used eight bank accounts at one financial institution to transfer and conceal the fraudulent proceeds. [R. 19, PSR ¶ 71.] She transferred the fraudulent proceeds across these accounts on a daily—and often hourly—basis. [*Id.*] Defendant used the fraudulent proceeds to fund her daily lifestyle, including to purchase clothes and electronics; to pay off personal debt; and to travel. [R. 3, Plea Agreement ¶ 4(bb).] She also used the fraudulent proceeds to pay the loan on her car. [R. 19, PSR ¶ 71.]

Additionally, defendant attempted to conceal fraudulent Covid-19 relief proceeds by conspiring with one or more of her family members. [*Id.* ¶ 73.] On at least one occasion,

defendant submitted a fraudulent application for a Paycheck Protection Program (PPP) loan using the name of a family member. [*Id.*] The fraudulent PPP proceeds were deposited into defendant's bank account, and defendant then transferred a portion of the proceeds to her family member's bank account. [*Id.*] This was uncharged but relevant conduct. *See* U.S.S.G. § 1B1.3(a)(1)(A).

III. The Presentence Report's Guidelines Calculations

The base offense level for wire fraud is 7, per U.S.S.G. § 2B1.1. [R. 19, PSR ¶ 78.] Based on the loss amount being more than \$250,000 but not more than \$550,000, probation applied a twelve-level specific-offense-characteristic enhancement. [*Id.* ¶ 79.] Probation also recommended two additional enhancements: (i) a two-level enhancement because the offense involved “a misrepresentation that the defendant was acting on behalf of a charitable, educational, [or] religious . . . organization”; and (ii) a two-level enhancement because “the offense . . . involved sophisticated means and the defendant intentionally engaged in or caused the conduct constituting sophisticated means.” [*Id.* ¶¶ 80-81.] The enhancements resulted in an adjusted offense level of 23. [*Id.* ¶ 85.]

Probation recommended a two-level reduction for acceptance of responsibility based on its conclusion that “defendant has clearly demonstrated acceptance of responsibility for the offense.” [*Id.* ¶ 87.] Probation also forecasted an additional one-level of acceptance credit based on its conclusion that “defendant has assisted authorities in the investigation and prosecution of [her] misconduct by timely notifying authorities of the intention to enter a guilty plea.” [*Id.*

¶ 88.] After a three-level reduction for acceptance of responsibility, probation calculated a total offense level of 20.² [*Id.* ¶ 89.]

Custody. Defendant has a criminal history score of 1, resulting in a criminal history category of I. [*Id.* ¶ 98.] A total offense level of 20 and a criminal history category of I yields a guidelines range of 33 to 41 months' imprisonment. [*Id.* ¶¶ 89, 98, 122.] The maximum term of imprisonment is 20 years. [*Id.* ¶ 121.]

Supervised Release. The guideline range for supervised release is one to three years. [*Id.* ¶ 125.] The maximum term of supervised release is three years. [*Id.* ¶ 124.]

Fine. The guideline range for a fine is \$15,000 to \$150,000. [*Id.* ¶ 133.] The maximum fine is \$250,000. [*Id.* ¶ 131 (citing 18 U.S.C. § 3571(b)).]

Restitution. Restitution in the amount of \$471,621 shall be ordered in this case under 18 U.S.C. § 3663A. Restitution is owed to the victims listed in the presentence report. [*Id.* ¶ 135.]

IV. Relevant sentencing factors in 18 U.S.C. 3553(a)

“The court shall impose a sentence sufficient, but not greater than necessary, to comply with the purposes set forth in [Section 3553(a)(2)].” 18 U.S.C. § 3553(a). In determining the appropriate sentence, the court “shall consider” the following sentencing factors, among others:

- The nature and circumstances of the offense. § 3553(a)(1).
- The history and characteristics of the defendant. § 3553(a)(1).
- 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. § 3553(a)(2)(A).

² The United States objected to probation's recommendation that defendant receive any acceptance-of-responsibility credits. [R. 24, USA Objections to PSR.] Defendant's post-plea conduct is inconsistent with acceptance of responsibility for her offense conduct. As noted in its objections, the United States “intends to offer proof at sentencing to sustain its objection.” [*Id.*]

- The need for the sentence imposed to provide adequate deterrence. § 3553(a)(2)(B).
- The need for the sentence imposed to protect the public from further crimes of the defendant. § 3553(a)(2)(C).

18 U.S.C. § 3553(a)(1)-(2).³

The offense in this case is serious, as evidenced by the intended loss amount, which exceeded \$540,000, and the purpose of the scheme, which was to unlawfully obtain Covid-19 relief funds specifically intended to assist struggling small businesses affected by the pandemic. The seriousness of the offense is amplified by the *number* of fraudulent loan applications defendant filed. [See, e.g., R. 3, Plea Agreement ¶ 4(ddd) (listing 10 fraudulent loan applications using the names of six different businesses).] Defendant’s conduct demonstrates a disregard for the law and a fundamental failure to appreciate the purpose of Covid-19 relief funds. The sentence in this case should reflect the seriousness of the offense, promote respect for the law, provide just punishment for the offense, and protect the public from further crimes of defendant. The sentence imposed should also promote adequate deterrence to defendant and others.

The Court should consider defendant’s history and characteristics, which are addressed in the presentence report. [R. 19, PSR ¶¶ 104-113.] Defendant is 42 years old and has lived most of her life in Texas, Mississippi, and Tennessee. [Id. ¶¶ 104, 106.] Defendant is well educated and has a master’s degree in business administration. [Id. ¶ 110.] She received a bachelor’s degree in biology (2002) from William Carey University in Hattiesburg, Mississippi, and a Master of Business Administration degree (2007) from the American Intercontinental University

³ Additional factors that the Court “shall consider” include the kinds of sentences available; the kinds of sentence and the sentencing range established for the applicable category of offense committed by the applicable category of defendant as set forth in the guidelines; any pertinent policy statements in the guidelines; the need to avoid unwarranted sentencing disparities; and the need to provide restitution to any victims. See 18 U.S.C. § 3553(a)(3)-(7).

in Houston, Texas. [*Id.* ¶ 110.] Defendant completed a Master of Business Administration degree in just nine months. [*Id.*] As of May 2021, defendant was enrolled in a program at William Carey University pursuing a degree in the Higher Education Administration Specialist Program—a two-step program with a specialist component and a doctorate component. [*Id.*] Defendant intends to complete both steps of that program. [*Id.*]

The Court should consider defendant’s educational history—and particularly her advanced business degree—in imposing a sentence that protects the public from further crimes of the defendant. *See* 18 U.S.C. § 3553(a)(2)(C). Here, defendant used her business expertise and experience with filing registration forms, tax documents, and profit-and-loss statements to commit fraud. Defendant’s knowledge of business administration and her experience as a business owner—coupled with the complex fraud schemes she devised in this case—creates a unique risk that defendant will exploit those skills to commit additional acts of fraud. This case presents a genuine need for the sentence imposed to protect the public from further crimes of the defendant. *See* 18 U.S.C. § 3553(a)(2)(C).

Defendant has a criminal record. [*Id.* ¶¶ 93-97.] Four of her five criminal convictions are for traffic offenses, such as driving without insurance; speeding; driving with an expired license; and driving without a seatbelt. [*Id.* ¶¶ 93-94, 96-97.] Defendant was also convicted in 2011 for theft of property by check. [*Id.* ¶ 95.] Defendant passed a bad check at a grocery store, and her bank account had insufficient funds to cover the check. [*Id.*] Defendant was sentenced to nine months of community supervision and twenty-four hours of community service; she was also required to attend an Anti-Theft class. [*Id.*] Defendant was granted early termination of supervision five months after her conviction. [*Id.*]

Defendant is currently employed an insurance claims adjuster for a company based in Georgia. [*Id.* ¶ 112.] She also reported that she owns three businesses: Enlightenment Family Care⁴; Enlightenment Networks; and JAHPOB Enterprises, Inc. [*Id.*] During its pretrial investigation, however, probation discovered additional information on the Tennessee and Mississippi Secretary of State websites reflecting that Bush was also the registered agent or incorporator for several businesses defendant did not initially disclose, including Enlightenment Enterprises, PDT Consulting, Motivational Moments with Porsha, Enlightenment Family Care, and Enlightenment Network.⁵ [R. 19 (Sealed) PSR ¶ 112.] Defendant's omission of these additional businesses could suggest that she did not recall her affiliation with them. But it could also suggest that she concealed this information from probation.

In any event, the Court should consider defendant's portfolio of businesses, and her access to those businesses, in imposing a sentence that protects the public from further crimes of the defendant. The Court should also consider defendant's knowledge of how to register and incorporate businesses in various states in imposing a sentence that both deters defendant from committing further crimes and protects the public from further crimes of the defendant.

⁴ Defendant submitted three fraudulent loan applications on behalf of Enlightenment Family Care. [R. 3, Plea Agreement ¶ 4(ddd).] In one of those applications, defendant represented to a financial institution that she was an independent contractor of Enlightenment Family Care, which she admitted was false. [*Id.* ¶ 4(11).]

⁵ Defendant used her ownership status of two of these businesses to commit fraud in this case. [R. 3, Plea Agreement ¶ 4(ddd).]

V. The enhancements in U.S.S.G. § 2B1.1(b)(10)(C) and (b)(9)(A) apply in this case.

A. The factual basis in the plea agreement confirms that defendant employed sophisticated means in furtherance of her fraud scheme.

The sentencing guidelines suggest a two-level enhancement if a defendant's "offense . . . involved sophisticated means and the defendant intentionally engaged in or caused the conduct constituting sophisticated means." U.S.S.G. § 2B1.1(b)(10)(C). The commentary to the guidelines defines "sophisticated means" as "especially complex or especially intricate offense conduct pertaining to the execution or concealment of an offense." *Id.* § 2B1.1, comment. (n.9(B).) For example, "[c]onduct such as hiding assets or transactions, or both, through the use of fictitious entities, corporate shells, or offshore financial accounts also ordinarily indicates sophisticated means." *Id.* But a defendant's conduct need not be "especially complex or especially intricate" for the sophisticated-means enhancement to apply. *See United States v. Mahmud*, 541 F. App'x 630, 636 (6th Cir. 2013); *United States v. Shifu Lin*, 508 F. App'x 398, 403 (6th Cir. 2012); *United States v. Lewis*, 76 F. App'x 47, 48 (6th Cir. 2003) (upholding enhancement where the defendant fraudulently obtained merchandise through use of an alias, fictitious companies, and fictitious references). In addition, "[a] series of criminal actions . . . may constitute sophisticated means even if none of the offenses, standing alone, is especially complex or intricate." *United States v. Montgomery*, 592 F. App'x 411, 418-19 (6th Cir. 2014) (affirming a district court's application of the sophisticated-means enhancement where a defendant submitted five fraudulent applications for victim-relief funds on behalf of three different fictitious entities); *see also United States v. Tandon*, 111 F.3d 482, 491 (6th Cir. 1997)

(applying a totality-of-the-circumstances approach in affirming a district court’s application of the sophisticated-means enhancement).

Montgomery is directly on point. There, like here, the defendant submitted false documents—including fabricated IRS documents and the “repeated submission of false quarterly profit-and-loss statements”—in support of his applications for relief funds. *Montgomery*, 592 F. App’x at 419; *see also id.* at 413 (“these purported IRS documents were complete fabrications: the company never filed any tax returns”). Defendant’s scheme in this case appears to be *at least* as complex as the fraud scheme in *Montgomery*. She submitted more fraudulent loans; she submitted more fraudulent tax forms; and she used various bank accounts to receive, transfer, and conceal the fraud proceeds.

Over a three-month period, defendant fraudulently applied for ten loans—on behalf of six different entities—seeking Covid-19 relief funds. Three of those entities were wholly fictitious and existed only on paper. Defendant used various bank accounts to receive, transfer, and conceal the fraudulent proceeds. She submitted fraudulent applications to four different financial institutions and to the SBA. She submitted fictitious IRS records and other fabricated documents in support of the loan applications. She also created and submitted fabricated profit-and-loss statements to demonstrate that the companies had generated revenue (they had not). These facts, which justify the sophisticated-means enhancement are all included in the plea agreement:

- Defendant “opened at least four new bank accounts . . . [to] receive and transfer unlawfully obtained [fraud] proceeds.” [R. 3, Plea Agreement ¶ 4(aa); *see also id.* ¶ 4(a)-(c) (referencing three of defendant’s numerous bank accounts).]
- She targeted different financial institutions to conceal the fraud scheme and avoid detection. [*Id.* ¶ 8 (listing victims).]
- She created and submitted fabricated profit-and-loss statements. [*E.g., id.* ¶ 4(x).]
- She created and submitted fabricated payroll records and wage information. [*Id.* ¶ 4(jj).]

- She created and submitted numerous fabricated IRS documents, none of which was ever filed with the IRS.
 - [See, e.g., R. 3, Plea Agreement ¶ 4(y) (Form 941); ¶ 4(gg) (Form 940); ¶ 4(ii) (Form 1040, Schedule C); ¶ 4(mm) (Form 1099-MISC); ¶ 4(oo) (Form 941); ¶ 4(qq) (Form 941); ¶ 4(ss) (Form 941); ¶ 4(tt) (Schedule C); ¶ 4(uu) (Form W-3); ¶ 4(ww) (Form 941); ¶ 4(xx) (Form W-3); ¶ 4(zz) (Form 941); ¶ 4(bbb) (Form 941); ¶ 4(ccc) (Form W-3).]

Defendant’s fraud scheme involved sophisticated means. A two-level enhancement should apply.

B. The factual basis confirms that defendant misrepresented that she was acting on behalf of a religious organization.

The sentencing guidelines suggest a two-level enhancement when “the offense involved [] a misrepresentation that the defendant was acting on behalf of a charitable, educational, religious, or political organization, or a government agency.” U.S.S.G. § 2B1.1(b)(9)(A). The commentary explains that the enhancement should apply “in any case in which the defendant represented that [she] was acting *to obtain a benefit* on behalf of a . . . religious . . . organization . . . (regardless of whether the defendant actually was associated with the organization . . .) when, in fact, the defendant intended to divert all or part of that benefit (*e.g.*, for the defendant’s personal gain).” *Id.* § 2B1.1, comment. (n.8(B)) (emphasis added). The commentary provides three illustrative examples of when the enhancement should apply—one of which is directly relevant: “A defendant who solicited contributions for a non-existent famine relief organization.” *Id.* § 2B1.1, comment. (n.8(B)(i)).

That is precisely what defendant did: she submitted two fraudulent loan applications on behalf of a fictitious entity named “Enlightenment Family Ministries”—a ministry defendant purported to own that did not exist. [R. 3, Plea Agreement ¶ 4(e), (rr)-(xx).] The name of the fictitious entity alone is sufficient to establish that defendant “misrepresent[ed] that [she] was acting on behalf of a . . . religious . . . organization.” U.S.S.G. § 2B1.1(b)(10)(A). Defendant’s misrepresentations were that the religious organization—Enlightenment Family *Ministries*—

existed, generated revenue, paid wages, and withheld employment taxes. [R. 3, Plea Agreement ¶ 4(rr)-(xx).] It did none of those things. And defendant “intended to divert all or part of th[e] benefit” she sought on behalf of Enlightenment Family Ministries to her own personal use. U.S.S.G. § 2B1.1, comment. (n.8(B).) Defendant admitted that she “used the fraudulently obtained proceeds . . . to purchase clothes and electronics; to pay off personal debt; to pay for personal travel; and to fund her daily lifestyle.” [R. 3, Plea Agreement ¶ 4(bb).]

Defendant argues that the religious-organization enhancement should not apply because the religious nature of the entity did not impact the conduct of *the victims*. But the Sixth Circuit has rejected such a narrow interpretation of the guideline. *See United States v. Wiant*, 314 F.3d 826, 829 (6th Cir. 2003).⁶ *Wiant* held that courts should apply the religious-organization enhancement according to the guideline’s “plain language,” which focuses on the *defendant’s* actions—not the motivations of the victim. *Id.* Indeed, the three illustrative examples in the commentary say *nothing* about the victim’s motivation in making contributions to a religious or charitable organization. U.S.S.G. § 2B1.1, comment. (n.8(B)(i)-(iii)). *Wiant* confirmed that the commentary to the guidelines, including the background comments defendant cited in her objections to the presentence report [*see* R. 23, Objections at 2], “provide no mandate for limiting the scope of the enhancement’s *actual* language.” *Wiant*, 314 F.3d at 829 (emphasis added). *Wiant* specifically undercuts defendant’s argument that the comprehensive nature of the PPP and EIDL programs precludes the applicability of the religious-organization enhancement. [*See* R. 23, Objections at 2 (arguing that “[t]he nature of the organization was not a factor and

⁶ When *Wiant* interpreted the religious- or charitable-organization enhancement, the enhancement was addressed in Guidelines Manual § 2F1.1. *Wiant*, 314 F.3d at 828. As *Wiant* recognized, however, the enhancement was later moved to Section 2B1.1. *Id.* at 828 n.1. The language of the enhancement and its commentary appears unchanged.

irrelevant in deciding whether the application was granted.”)] *Wiant* held that whether the victim of the fraud is motivated by a defendant’s misrepresentation is irrelevant. *See Wiant*, 314 F.3d at 828-29. Other circuits agree. *See, e.g., United States v. Reasor*, 541 F.3d 366, 371 (5th Cir. 2008); *United States v. Berger*, 224 F.3d 107, 120-21 (2d Cir. 2000); *United States v. Bennett*, 161 F.3d 171, 191-92 (3rd Cir. 1998); *United States v. Ferrera*, 107 F.3d 537, 543 (7th Cir. 1997).

Defendant filed two fraudulent PPP loan applications misrepresenting that she was acting on behalf of a religious organization—Enlightenment Family *Ministries*. She used the fraud proceeds exclusively for her own personal use. Defendant’s offense conduct falls within the scope of the plain language of U.S.S.G. § 2B1.1(b)(9)(A). Probation rightly applied a two-level enhancement.

VI. CONCLUSION

This Court should overrule defendant’s objections to the presentence report and impose a custodial sentence above the guidelines range. The Court should also impose a three-year term of supervised release and a within-guideline fine.

Respectfully submitted,

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