

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

UNITED STATES OF AMERICA,

Plaintiff,

v.

Case No. 20-CR-197

TARONE WOODS,

Defendant.

GOVERNMENT’S SENTENCING MEMORANDUM

Tarone Woods (“the Defendant”) submitted a fraudulent Paycheck Protection Program (“PPP”) application to Financial Institution 1 for his business Comfort Care Transit, LLC seeking \$230,000. For his conduct, the Defendant faces a guideline sentencing range of 18-24 months’ incarceration as recommended by the Plea Agreement (Dkt. No. 2) and the Presentence Investigation Report (Dkt. No. 26) 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 \$190,000 in restitution.

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

The government’s prosecution in *United States v. Thomas Smith, et al.* involves 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. Marvoin Fitzgerald*, 20 CR 202; *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 even exist. *Id.* Proceeds of the fraud were shared among co-defendants. *Id.* 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. TARONE WOODS

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. 24.)

To summarize, in May 2020, Thomas Smith approached the Defendant and told him that he could get him money for his business, Comfort Care. Comfort Care had not been in operation since 2015. The Defendant, who understood Thomas Smith to be a successful businessman, agreed to work with Thomas Smith to get a loan. Thomas Smith directed the Defendant to restore Comfort Care to good standing with the State of Wisconsin and open a banking account at Financial Institution 1. The Defendant also agreed to pay Thomas Smith half of the loan proceeds after the loan was funded.

On May 18, 2020, Thomas Smith provided the Defendant with a fraudulent loan application that Thomas Smith had created for Comfort Care. The loan application falsely stated that Comfort Care was operational as of February 15, 2020, had 23 employees for whom Comfort Care paid salary and taxes, and had an average monthly payroll of \$92,000. The application package also included false tax documents. The Defendant reviewed the application package and noted the false information. Nonetheless, he signed the package and dropped it off at a Financial Institution 1 branch.

On May 20, 2020, Financial Institution 1 approved the PPP loan and wired \$230,000 to the Comfort Care account. Per their agreement, and at Thomas Smith's direction, the Defendant obtained three cashier's checks totaling \$115,000 to Thomas Smith's entities and provided them to Thomas Smith.

When Financial Institution 1 froze their accounts in June 2020, Thomas Smith provided the Defendant with a fake bill of sale for a bus that was meant to explain one of the \$40,000 checks. Thomas Smith also directed the Defendant to make false statements to Financial Institution 1 about Comfort Care and the payments, which the Defendant did. Thomas Smith also directed the Defendant to delete emails and text messages detailing their scheme.

III. PROCEDURAL BACKGROUND

A more detailed recitation of the procedural history of this case can be found in the Government's Position on Restitution. (Dkt. 24.) To summarize, on October 20, 2020, a grand jury returned an indictment charging the Defendant, Thomas Smith,

Stephen Smith, Robert Hamilton, and Jonathan Henley for participating in a bank fraud scheme between April 2020 and July 2020, in violation of Title 18, United States Code, Section 1344, and for engaging in money laundering, in violation of Title 18, United States Code, Section 1957. (*United States v. Thomas Smith, et. al.*, 20-cr-196, Dkt. 1.)

The Defendant was charged by information with one count of false statements, Title 18, United States Code, Section 1001 on October 23, 2020. The Defendant pled guilty to Count One of the Information pursuant to a written plea agreement on November 10, 2020. (Dkt. 2.) Sentencing was scheduled for June 11, 2021 but was rescheduled at the Defendant's request for July 15, 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 3, 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 ¶ 75.) The Probation Officer found that the Defendant was subject to a Base Offense Level of 6 under U.S.S.G. § 2B1.1(a)(1). (*Id.* at ¶ 25.) 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 ¶ 26.) The Defendant received a two-level enhancement because the offense involved sophisticated means under U.S.S.G §2B1.1(b)(10)(C). (*Id.* ¶ 27.)

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 should be punished for his choice to do so. 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 was the owner of the defunct business that was not eligible for a PPP loan, 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 lies to the bank about the state of Comfort Care and his payments to Thomas Smith.

The Defendant's conduct was serious, but there are some mitigating factors to consider. The Defendant's role in the scheme was significantly less than others including Thomas Smith. The Defendant was recruited to the scheme by Thomas Smith, who had been a business mentor to him in the past and the Defendant understood to be a successful businessman. Furthermore, the Defendant did not create any of the loan paperwork or fake tax documents used as part of the scheme.

Finally, it is also notable that the Defendant did not actually spend most of the fraudulently obtained loan proceeds. The Defendant obtained \$230,000 from the PPP loan. He agreed to give Thomas Smith \$115,000 from that. The Defendant succeeded in transferring \$40,000 to Thomas Smith, but Financial Institution 1 froze the Defendant's account before any other funds could be transferred to Smith. The Defendant spent approximately \$10,000 on his own personal expenses, which included paying off debts for rent and medical bills.

B. History and Characteristics of the Defendant

The Defendant is a 41-year-old man who suffers from certain health conditions. (PSR ¶ 45, 56.) He grew up in a stable family and has close relationships with an extended family. (*Id.* ¶ 68-75.) The Defendant has held a position doing data entry since March 2020 and has been gainfully employed for most of his adult life. (*Id.* ¶ 65, 69.) He enjoys his current work and hopes to continue his employment in the future.

(*Id.* ¶ 69.) The Defendant has a sixteen-year-old son, who he reports being close to. (*Id.* ¶ 54.) The Defendant has no criminal history. (*Id.* ¶ 40.)

The Defendant deserves credit for accepting responsibility early and saving the government considerable resources in preparing for trial. Furthermore, the Defendant appears to have committed this offense due to a desire to provide for his family and restart his business, which 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).

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.

The Defendant's lack of a criminal record, his genuine remorse demonstrated by the fact that he pled guilty quickly upon being approached by law enforcement, and the

fact that he was only involved with one loan, indicates that specific deterrence is not a concern in this case.

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. Those cases involved multiple loans and significantly more money than in this case. *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).

While the other cases around the country provide some point of reference for the appropriate sentence, the more appropriate comparison is with the other defendants charged as part of this scheme. When comparing the Defendant to others in the scheme, the government submits that the Defendant was significantly less culpable than

Thomas Smith or Stephen Smith.¹ This should be reflected in his sentence. The Defendant was recruited into the scheme by Thomas Smith, who he looked up to as a mentor in business. He did not fill out any of the applications or create false documents like Thomas Smith. Finally, unlike Thomas Smith, the Defendant was not involved in the creation or direction of the scheme.

Rather, the Defendant is more akin to the other defendants in this scheme who were recruited to the scheme by individuals they looked up to and respected. A sentence similar to the other defendants, such as Samuel Davis and Robert Hamilton is more appropriate.

VI. RESTITUTION & FORFEITURE

The government incorporates its Position on Restitution for Sentencing, filed on April 13, 2021 at Docket No. 24. For the reasons explained in that submission, the Defendant should be ordered to pay \$190,000 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 of the Guidelines, two years of supervised release, and order the Defendant to pay \$190,000 in restitution. The United

¹ Thomas Smith received a sentence of 57 months' confinement; Stephen Smith will be sentenced on July 14, 2021.

States submits that this sentence is sufficient, but not greater than necessary, to satisfy the purposes of sentencing.

Respectfully Submitted,

JOSEPH BEEMSTERBOER
Acting Chief, Fraud Section
U.S. Department of Justice

/s/Laura Connelly _____
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CERTIFICATE OF SERVICE

I hereby certify that on July 8, 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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