

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF ARKANSAS
HOT SPRINGS DIVISION

UNITED STATES OF AMERICA)
) No. 6:21-cr-60007-SOH-001
v.)
)
JAMES HERITAGE)

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. 18* (“PSR”).

BACKGROUND

After pleading guilty to a two-count Information stemming from his filing fraudulent applications for SBA-backed loans and unemployment benefits, Heritage awaits sentencing before this Court. 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. Objection 1-Outstanding Debit Cards.

The United States acknowledges that a few state-issued debit cards remain in Heritage’s possession (through his counsel), and they may contain funds that would reduce the amount of restitution owed. The parties have thus far unsuccessfully transferred those cards to the Government’s possession. Once received, it is the United States’ intent to determine whether they contain funds, and if so, to return those funds to the victim state and notify the Court so that it can appropriately offset the restitution amount.

2. Objection 2-The Number of Victims.

The United States disagrees with Heritage's assertion that the United States is the only victim in the case. A victim is the person or entity "proximately harmed as a result of the commission of an offense for which restitution may be ordered." 18 U.S.C. § 3663A(a)(2). Here, the provider states and the U.S. Government were harmed. It was each states' resources, even if funded by the federal government, which were reduced by Heritage's scheme, leaving the states with less money to provide to legitimate unemployment applicants. Regarding the unemployment benefits, Heritage made misrepresentations to individual states and their employees, not the federal government. Heritage received mail and wire transfers from individual states, not the federal government. Heritage's restitution will be repaid to individual states, not the federal government.

3. Objection 5-The Seized Funds.

As the addendum to the PSR rightly notes, the United States is in possession of \$230,000 of criminal proceeds seized from Heritage and administratively forfeited by the U.S. Postal Inspection Service. While forfeiture and restitution are different processes serving different goals (forfeiture is punitive, while restitution is remedial), the United States can, in its discretion, seek to remit forfeited proceeds to the victims. It is the United States intent to remit the entirety of the \$230,000 in this case. And under that circumstance, the restitution amount should be offset by the funds remitted. However, a precondition to seeking remission from the agency in possession of the funds is the existence of a final judgment. Accordingly, the United States asks the Court to impose the restitution as presented in the PSR. Once USPIS authorizes remission of the forfeited proceeds, the United States will notify the Court so that it can appropriately offset the restitution amount.

4. 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 Heritage's offense conduct are applied to those criteria, a substantial sentence 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 Heritage, it presented a prime opportunity to steal money the U.S. Government earmarked for those most in need. His conduct merits a substantial sentence.

The crime was not only opportunistic, but it was also comprehensive. Heritage raided nearly every coffer providing pandemic assistance. The sheer amount of effort required to file for unemployment benefits from nearly every state in the union, as well as creating a bogus loan application is staggering. He had every opportunity to change course but forged ahead.

It's true that Heritage was forthcoming when initially interviewed. But it's worth noting that the interview occurred only after the execution of search and seizure warrants of his properties and a portion of his proceeds. Heritage was forthcoming only when he was caught red-handed.

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)).

Heritage's abuse of the PPP program and particularly egregious abuse of the Unemployment Insurance systems demands just punishment and must promote respect for the law. Moreover, as the second wave of PPP loan applications are on the horizon, Heritage's sentence

should send a message to others that preying on this program will not be treated with leniency. Accordingly, the United States seeks a substantial sentence.

CONCLUSION

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

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Hunter Bridges, hereby certify that on September 2, 2021, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF System. In addition, I deposited in the United States mail a copy to the following:

Timothy Clay Janske
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Hot Springs, AR 71901

/s/ Hunter Bridges
Hunter Bridges
Assistant U.S. Attorney