

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND**

UNITED STATES OF AMERICA

v.

NKENG AMIN

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CRIMINAL NO. PWG-17-661

SENTENCING MEMORANDUM
(As to Defendant Amin)

The United States of America, by and through its undersigned counsel, hereby submits its sentencing memorandum in advance of defendant’s, Nkeng Amin a/k/a “Rapone”, sentencing currently scheduled for April 1, 2019 at 1 p.m.

Background

As set forth in the government’s sentencing memorandum dated December 27, 2018, and incorporated here, Amin was a leading member of a large-scale business email compromise scheme during which Amin and his co-conspirators victimized at least 13 individual and business victims located throughout the United States, obtaining over \$4.2 million and attempting to obtain over \$10.9 million. Amin worked hand-in-hand with Fomukong to perpetrate the fraud in Maryland. However, Amin not only worked with Fomukong, he independently corresponded with the leaders of the fraud scheme located in South Africa and recruited and managed his own co-conspirators, including defendant Yanick Eyong, to open bank accounts to receive victim funds and withdraw the victim funds from the fictitious bank accounts before the fraud was detected. Thus, unlike many of the other conspirators previously

sentenced in this case, Amin was a major, independent actor who had full knowledge of the fraud scheme. This is reflected by the fact that Fomukong and Amin are the only two defendants charged and convicted of *both* wire fraud conspiracy and money laundering conspiracy.

The Guidelines

Because Amin pled guilty to wire fraud conspiracy and money laundering conspiracy without the benefit of a plea agreement, there is no agreement as to the defendant's guidelines. In fact, Amin objected to each of the enhancements contained within the Presentence Report ("PSR"). As such, the government addresses each in turn below.

In addition, the government objects to the PSR's application of a base offense level of 6 pursuant to United States Sentencing Guidelines ("U.S.S.G.") § 2B1.1(a)(2). Rather, the government submits that the base offense level is 7, pursuant to U.S.S.G. § 2B1.1(a)(1).

A. Legal Standard

Unlike a trial, at sentencing the standard of proof is a preponderance of the evidence. *United States v. Brooks*, 957 F.2d 1138, 1148 (4th Cir. 1992). The Fourth Circuit has repeatedly held, post-*Booker*, that the standard of proving sentencing guideline factors remains by a preponderance. *See, e.g., United States v. White*, 405 F.3d 208, 219 (4th Cir. 2005) ("In any given case after *Booker*, a district court will calculate, consult, and take into account the exact same guideline range that it would have applied under the pre-*Booker* mandatory guidelines regime."); *United States v. Morris*, 429 F.3d 65, 72 (4th Cir. 2005) (holding that, post-*Booker*, district courts should apply a preponderance of the evidence standard, taking into account that the resulting guideline range is advisory).

Moreover, it is undisputed that at a sentencing hearing, the court may consider a “broad scope” of information. *United States v. Falesbork*, 5 F.3d 715, 722 (4th Cir. 1993). Since before the founding of our Nation, sentencing judges have relied upon a wide array of “sources and types of evidence . . . to assist [them] in determining the kind and extent of punishment to be imposed within limits fixed by law.” *Witte v. United States*, 515 U.S. 389, 397-98 (1995) (quoting *Williams v. New York*, 337 U.S. 241, 246 (1949)). As the Supreme Court articulated in *Witte*, “a sentencing judge may appropriately conduct an inquiry broad in scope, largely unlimited either as to the kind of information he may consider, or the source from which it may come.” *Id.* at 398 (internal quotations and citations removed).

This broad view as to the admissibility of evidence during sentencing is mandated in 18 U.S.C. § 3661, which states, “[n]o limitation shall be placed on the information concerning the background, character, and conduct of a person convicted of an offense which a court of the United States may receive and consider for the purpose of imposing an appropriate sentence.”

Both the U.S. Sentencing Guidelines and the Federal Rules of Evidence reiterate the broad range of evidence available for a court’s consideration at sentencing, with the Guidelines permitting all relevant and reliable evidence. U.S.S.G. § 6A1.3(a) (“sentencing judges are not restricted to information that would be admissible at trial.”); Fed. R. Evid. 1101(d)(3) (exempting sentencing proceedings from the Federal Rules of Evidence). The Fourth Circuit’s statement in *United States v. Bowman*, 926 F.2d 380, 381 (4th Cir. 1991), aptly summarizes this principle: “[t]he type of information to be considered by a sentencing judge is unlimited.” Thus, a sentencing judge may consider any relevant and reliable evidence in determining a defendant’s sentence.

B. The Defendant's Objections to the Guidelines

1. *Loss Amount (Victims E, G, and K)*

Amin challenges the loss amount foreseeable to him, asserting that the loss amount attributable to him is below \$1.5 million. The statement of facts to which Amin agreed belies this assertion. As the application notes to the Guidelines makes clear, the loss amount includes both the actual and intended loss amounts and includes all "reasonably foreseeable pecuniary harm." U.S.S.G. § 2B1.1, application note 3. In turn, "reasonably foreseeable pecuniary harm" is defined as "pecuniary harm that the defendant knew or, under the circumstances, reasonably should have known, was a potential result of the offense." *Id.*

JB Studios and Victim E

At this plea hearing, Amin admitted to registering the fictitious business JB Studios and opening BOA x9244 in the name of this fictitious business. In May 2017, a co-conspirator caused **Victim E** to wire \$458,500 into BOA x9244, which was controlled by Amin. This entire amount, therefore, was foreseeable to Amin and is properly included in the loss calculations.

CL Escrow LLC and Victim G and Victim K

Amin also admitted to directing Eyong to register the fictitious business CL Escrow LLC and to open BOA x0042 using this fictitious business. Amin (and Eyong, *see* ECF No. 95) further admitted that Eyong provided all the documentation to Amin, who in turn provided the documentation to Fomukong. This interaction is confirmed by WhatsApp communications between Fomukong ("Albanky") and Amin ("Rapone" and "Rapone New"), which were found on two different phones seized by law enforcement from Fomukong. Specifically, Exhibit A and Exhibit B filed herewith contain WhatsApp communications and images sent between Amin

(“Rapone New”) and Fomukong (“Albanky”) from one phone seized by law enforcement from Fomukong’s residence (“Fomukong Phone 1”).¹ Exhibits C and D contain WhatsApp communications and images sent between Amin (“Rapone”) and Fomukong (“Albanky”) from a separate phone seized by law enforcement from Fomukong’s residence (“Fomukong Phone 2”). In both conversations, Amin and Fomukong discuss the CL Escrow accounts, the wires into those accounts, and the withdrawals from those accounts. For example, on June 16, 2017, Amin sent Fomukong, using Fomukong Phone 1, a State of Maryland Department of Assessments and Taxation document regarding CL Escrow LLC and a photograph of the associated EIN. Ex. A at 2-3, Ex. B at 1, 3. Then, on Fomukong Phone 1, Amin sent the bank account information for the CL Escrow LLC drop accounts at TD Bank and Suntrust Bank, Ex. A at 3, 4; Victim G’s business name, Ex. A at 4 (sent on June 21, 2017 at 12:57:08 PM); and Eyong’s name and address, Ex. A. at 5. On Fomukong Phone 2, Amin sent Fomukong the information related to CL Escrow BOA x0042. Ex. C at 4.

Then, as Amin admits, on June 21, 2017, **Victim G** wired \$6 million into BOA x0042.

After the \$6 million wire transfer, the following transactions took place:

6/21/17	\$2,900 ACH payment to Amex
6/22/17	\$2,350,000 wire transfer to ABSA Bank South Africa acct x2678 in the name of TITUS INDUSTRIES LTD
6/22/17	Purchase of 3 cashier’s checks totaling \$285,000 (see details below)
6/22/17	\$639 ACH payment to Amex
6/23/17	\$10,000 cash withdrawal
6/23/17	Purchase of 3 cashier’s checks totaling \$285,000 (see details below)
6/23/17	\$500 SquareCash mobile payment
6/23/17	\$2,927.72 check card payment to Versace in McClean, VA
6/26/17	\$276.20 check card payment to United Airlines

¹ Because the embedded images are difficult to see, the government has filed larger images of the relevant photographs as Exhibit B and D.

6/26/17	\$500 SquareCash mobile payment
6/26/17	\$500 SquareCash mobile payment
6/26/17	\$485 SquareCash mobile payment
6/27/17	\$639 ACH payment to Amex
6/29/17	\$639 ACH payment to Amex

Importantly, Amin was aware of the \$2,350,000 wire transfer to ABSA Bank South Africa because Fomukong provided Amin a copy of the wire instructions on June 22, 2017 using Fomukong Phone 1. *See* Ex. A at 4 (image sent on June 22, 2017 at 10:45:48); Ex. B at 2 (larger image).

In addition, on June 22, 2017, Eyong purchased the following cashier's checks in Wheaton, Maryland:

- Cashier's Check in the amount of \$95,000 made out to Individual 5
- Cashier's Check in the amount of \$95,000 made out to QPZYTK LINK CO
- Cashier's Check in the amount of \$95,000 made out to QPZYTK LINK CO

Eyong further purchased the following cashier's checks on June 23, 2017, in Humble, Texas:

- Cashier's Check in the amount of \$95,000 made out to QPZYTK LINK CO
- Cashier's Check in the amount of \$95,000 made out to QPZYTK LINK CO
- Cashier's Check in the amount of \$95,000 made out to QPZYTK LINK CO

QPTZYK LINK CO. is a fictitious business. Despite his suggestion otherwise, Amin was clearly aware of these cashier's checks because Fomukong directed Amin using Fomukong Phone 1: "qpzytx link co . . . Bro na 95k for 5 cheque for that name." Ex. A at 4.

As such, Amin indisputably knew that the \$6 million went into the account, and directed Eyong to dissipate the funds, including the \$2,350,000 wire to South Africa and the \$570,000 worth of cashier's checks. As such, the entire \$6 million is properly included in the intended loss amount.

Finally, Amin further admitted that he directed Eyong to open the drop account TD Bank x3845, also in the name of CL Escrow LLC, which Amin then provided to Fomukong on June 20, 2017. Ex. A at 3. On July 13, 2017, **Victim K** wired \$292,830 into TD Bank x3845. Using Fomukong Phone 2, Fomukong told Amin: “My guy do 292 . . . For that td.” Ex. C at 7. The next day, Fomukong provided Amin an image of wire instructions related to that very wire. Ex. C at 8; Ex. D. As such, Amin clearly had knowledge of the \$292,830 wire from **Victim K** into Eyong’s TD Bank account.

The intended loss amount, therefore, is at least \$6,751,330, which establishes a 18-level increase to the base offense level pursuant to U.S.S.G. § 2B1.1(b)(1)(J). Indeed, given Amin’s intimate knowledge of the fraud ring, including the fact that Amin corresponded directly with the coconspirators in South Africa (as further discussed below), the reasonably foreseeable loss amount is far greater than \$6.7 million. *See, e.g.*, Ex. F at 23 (Amin claiming that he, not Fomukong, was “the head machine.”) As such, the 18-level enhancement is a conservative enhancement.

2. *Substantial Financial Hardship*

U.S.S.G. § 2S1.1(b)(2)(A)(iii) provides for a 2-level enhancement where the defendant’s offense “resulted in substantial financial hardship to one or more victims.” The Guideline commentary, at Application Note 4(f) states that the non-exclusive factors to consider is whether the offense resulted in the victim: “(i) becoming insolvent; (ii) filing for bankruptcy under the Bankruptcy Code (title 11, United States Code); (iii) suffering substantial loss of a retirement, education, or other savings or investment fund; (iv) making substantial changes to his or her employment, such as postponing his or her retirement plans; (v) making substantial changes to

his or her living arrangements, such as relocating to a less expensive home; and (vi) suffering substantial harm to his or her ability to obtain credit.” Applying these factors, it is clear that **Victim E**, at minimum, suffered substantial financial hardship due to Amin’s fraudulent conduct.

In **Victim E**’s victim impact statement, which was previously provided to the Court and counsel for the defendant and is attached here as Exhibit E, **Victim E** explains that he was one of three partners who moved to the United States from Afghanistan pursuant to a Special Immigrant Visa (“SIV”). SIVs permitted Afghans who supported the United States government by putting their lives in danger during the war in Afghanistan to move to the United States. Ex. E. Once Victim E and his partners arrived in the United States, they established a business to purchase old properties and renovate them for profit. Ex. E. However, because of Amin’s fraud, which resulted in **Victim E**’s wire of \$458,500, **Victim E** and his partners lost 90% of the assets that they had saved to support their business. As such, they “were unable to start any work due [to] the fact that [they] lost the big portion of company assets/capital . . .” Ex. E. There is no question that Amin’s fraudulent conduct thus caused substantial financial hardship to **Victim E** and his business.

As such, the defendant’s offense caused a substantial financial hardship to at least one victim, and a 2-level enhancement applies.

3. *Commission Outside of the United States or Sophisticated Means*

U.S.S.G. § 2B1.1(b)(10) provides for a 2-level enhancement where a substantial part of the fraudulent scheme was committed from outside of the United States *or* the offense otherwise involved sophisticated means and the defendant intentionally engaged in or caused the conduct constituting sophisticated means. Both of these provisions are satisfied here.

Amin was the fifth defendant to plead guilty. Amin's co-conspirators Fomukong, Eyong, and Cho all admitted under oath that a substantial part of the fraudulent scheme was committed from outside of the United States, namely South Africa. *See* ECF Nos. 86 (Fomukong), 95 (Eyong), and 103 (Cho). And, as discussed above, Amin was responsible for the wire of \$2.3 million to South Africa, which involved **Victim G's** funds.

More importantly, however, Amin himself communicated with the individuals in South Africa who were orchestrating the scheme. Exhibits F and G, filed herewith, are excerpts from WhatsApp communications between Amin and two individuals in South Africa in which the frauds are discussed. Notably, the country code for South Africa is +27. As such, the numbers Amin is communicating and working directly with in both Exhibits F and G are South African phone numbers. Moreover, the communications indicate that Amin clearly had an intricate knowledge of the frauds, including the international aspect of the fraud. *See, e.g.*, Ex. F at 2 (South C stating "And all u need to do is send me name or account so I wire ur cut back after I have cleaned the money" and Amin responding "I have no problem with that as long as my side is safe, then I have to be sure u sending my cut if am trusting u."); Ex. F at 10, 14-16 (sharing international banking information); Ex. F at 24 (indicating that Amin sent funds to South C's account in South Africa); Ex. G at 2 (the South African coconspirator asking Amin for an "account needed urgently"); Ex. G at 3 (referencing numerous international accounts).

In addition, the fraud involved sophisticated means, in that it involved fictitious entities, corporate shells, and offshore financial accounts. *See* U.S.S.G. § 2B1.1(b)(10)(C) and application note 9(B). A 2-level enhancement pursuant to U.S.S.G. § 2B1.1(b)(10) is warranted.

4. *Sophisticated Laundering*

U.S.S.G. § 2S1.1(b)(3) provides for a 2-level enhancement where a defendant was convicted under 18 U.S.C. § 1956 and “the offense involved sophisticated laundering.” The Guideline commentary, at Application Note 5, explicates that “sophisticated laundering” “means complex or intricate offense conduct pertaining to the execution or concealment of the 18 U.S.C. § 1956 offense” and typically involves the use of fictitious entities, shell corporations, two or more layering of transactions, or offshore financial accounts.

Here, the defendant’s plea agreement (as well as the plea agreements for Amin’s co-conspirators, including Fomukong, Cho, Eyong, and Ganda) specifies that each of these factors occurred here. First, Amin and his co-conspirators registered fictitious businesses in Maryland and elsewhere, and then opened corresponding bank accounts. Indeed, not only did Amin register fictitious business and drop account himself (JB Studios), he also recruited another individual, Eyong, to register a fictitious business and two drop accounts. In addition, Amin and his co-conspirators made out cashier’s checks to fictitious businesses, which were thereafter negotiated in Texas, and layered the withdrawals and other transactions. Crucially, Amin also was responsible for attempting to wire \$2.3 million to an offshore financial accounts in South Africa, and discussed numerous other offshore accounts with the coconspirators in South Africa, as discussed above. The 2-level enhancement for sophisticated laundering clearly applies.

5. *Conviction Under 18 U.S.C. § 1956*

Curiously, Amin objects to the 2-level enhancement pursuant to 2S1.1(b)(2)(B), because he was convicted under 18 U.S.C. § 1956. Amin pled guilty to conspiracy to commit money laundering, in violation of 18 U.S.C. § 1956(h). This 2-level enhancement applies.

C. The Government's Objections to the Guidelines

The PSR determined that the final adjusted offense level, after a 3-level reduction for acceptance of responsibility, is 29. This final offense level is derived from a base offense level of 6, pursuant to U.S.S.G. § 2B1.1(a)(2), plus the Guidelines enhancements discussed above. However, the government submits that the plain reading of the Guidelines requires the application of a base offense level 7, pursuant to U.S.S.G. § 2B1.1(a)(1). The government submits that the final adjusted offense level is, therefore, 30.

There is no dispute that Counts One and Two group, pursuant to U.S.S.G. § 3D1.2(c). As such, the group with the larger offense level controls. In this case, that is the Guidelines for money laundering conspiracy, in violation of 18 U.S.C. § 1956(h). The applicable Guidelines for a violation of 18 U.S.C. § 1956(h) is U.S.S.G. § 2S1.1(a). In turn, U.S.S.G. § 2S1.1(a) directs that the base offense level is the offense level for the underlying offense from which the laundered funds were derived. The underlying offense here is wire fraud conspiracy, in violation of 18 U.S.C. § 1349. The applicable Guidelines for this offense is U.S.S.G. § 2B1.1. *See* U.S.S.G. § 2X1.1; 2B1.1. In turn, U.S.S.G. § 2B1.1 mandates that the base offense level is either:

- (1) a 7, if (A) the defendant was convicted of an offense referenced to this guideline; and (B) that the offense of conviction has a statutory maximum term of imprisonment of 20 years or more; or
- (2) a 6, otherwise.

U.S.S.G. § 2B1.1.

Here, Amin has been convicted of conspiracy to commit wire fraud, which is, according to U.S.S.G. § 2B1.1, application note 2(A), “referenced to this Guideline” because wire fraud (and thus wire fraud conspiracy) specifically references U.S.S.G. § 2B1.1 in the Appendix. As such, the Government submits that the base offense level is a 7.

Conclusion

At sentencing, the government anticipates that, based on the government’s calculation of the Guidelines (30/CHC I), the advisory Guidelines range will be 97-121 months imprisonment. The government further anticipates that it will recommend a sentence of 100 months imprisonment—*regardless of the Guidelines calculations*.² In addition, the government will seek both a restitution and forfeiture order in the amount of \$1,021,274, comprised of the following:

- \$328,237.00 to Victim E;
- \$589,812 to Victim G; and
- \$103,425 to Victim K.

The government respectfully contends that such a sentence is sufficient but not greater than necessary to achieve the purposes of sentencing pursuant to 18 U.S.C. § 3553(a).

Respectfully submitted,

Robert K. Hur
United States Attorney

By: _____/s/_____
Kelly O. Hayes
Assistant United States Attorney

² Even if the Court agrees with the PSR’s calculation of the advisory Guidelines range, namely 87 to 108 months, or any other advisory Guidelines range, the Government submits that 100 months is the appropriate sentence pursuant to 18 U.S.C. §3553(a).