

UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT

UNITED STATES OF AMERICA

CRIM. NO. 3:15CR136(MPS)

v.

JEFFREY KRANTZ

December 3, 2015

GOVERNMENT'S MEMORANDUM IN AID OF SENTENCING

The United States respectfully submits this memorandum for the sentencing of the defendant Jeffrey Krantz which is scheduled for December 10, 2015.

I. INTRODUCTION AND BACKGROUND

On July 28, 2015, the defendant waived Indictment and entered a guilty plea to one count of wire fraud, in violation of 18 U.S.C. § 1343.

II. FACTS AND CIRCUMSTANCES OF DEFENDANTS' CONDUCT

The defendant faces a total maximum penalty of twenty years' imprisonment, a \$250,000 fine, three years of supervised release, a restitution order, and a \$100 special assessment.

As set forth in the plea agreement, the parties agreed that the defendant's total offense level is 14 and his imprisonment range is 15 to 21 months. Despite the guideline range, the parties agreed that a guideline range of 0 to 10 months' imprisonment is appropriate, which is to be followed by a term of supervised release. The Government has agreed not seek a sentence above 10 months' imprisonment. The defendant has agreed to pay \$402,650 in restitution in this matter in accordance with the Rider Concerning. The defendant has agreed not to participate in the buying or selling of electronic parts, including from Harry Krantz, LLC, for any term of probation or supervised release to begin on the date of sentencing and is not to

exceed two years. The defendant also agrees to relinquish all control directly, or indirectly, of Harry Krantz LLC., and any benefit or financial interest from this company as owner.

### III. Discussion

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##### A. Determining an Appropriate Sentence Post-Booker

Although the Sentencing Guidelines are no longer mandatory, they must be considered by the Court along with the other factors listed in 18 U.S.C. § 3553(a). *United States v. Booker*, 543 U.S. 220, 260-61 (2005); *United States v. Crosby*, 397 F.3d 103, 110 (2d Cir. 2005); *Gall v. United States*, 552 U.S. 38, 50 n.6 (2007) (“district courts must begin their analysis with the Guidelines and remain cognizant of them throughout the sentencing process”). Ultimately, a district court’s sentence is reviewed for reasonableness. *Booker*, 543 U.S. at 260-61; *Crosby*, 397 F.3d at 114-15. Reasonableness is a flexible concept and district courts are given latitude in their exercise of discretion to fashion an appropriate sentence, even a non-Guidelines sentence. *See United States v. Jones*, 460 F.3d 191 (2d Cir. 2006).

The Second Circuit has instructed district judges to consider the Guidelines “faithfully” when sentencing. *Crosby*, 397 F.3d at 114. The fact that the Sentencing Guidelines are no longer mandatory does not reduce them to “a body of casual advice, to be consulted or overlooked at the whim of a sentencing judge.” *Crosby*, 397 F.3d at 113. Because the Guidelines are “the product of careful study based on extensive empirical evidence derived from the review of thousands of individual sentencing decisions,” *Gall*, 552 U.S. at 46, district courts must treat the Guidelines as the “starting point and the initial benchmark” in sentencing proceedings. *Id.* at 49; *Kimbrough v. United States*, 552 U.S. 85, 107 (2007). The Second Circuit has “recognize[d]

that in the overwhelming majority of cases, a Guidelines sentence will fall comfortably within the broad range of sentences that would be reasonable in the particular circumstances.” *United States v. Fernandez*, 443 F.3d 19, 27 (2d Cir. 2006); see also *Kimrough*, 552 U.S. at 89 (“We have accordingly recognized that, in the ordinary case, the Commission’s recommendation of a sentencing range will ‘reflect a rough approximation of sentences that might achieve § 3553(a)’s objectives.”) (quoting *Rita v. United States*, 551 U.S. 338, 350 (2007)).

In this case, the sentence should reflect the considered judgment of the Sentencing Commission, “an expert agency whose statutory charge mirrors the § 3553(a) factors that the district courts are required to consider,” *United States v. Rattoballi*, 452 F.3d 127, 133 (2d Cir. 2006), and is “based on extensive empirical evidence derived from the review of thousands of individual sentencing decisions.” *Gall*, 552 U.S. at 46.

B. The Section 3553 Factors

Under 18 U.S.C. § 3553(a), the sentencing “court shall impose a sentence sufficient, but not greater than necessary, to comply with the purposes set forth in paragraph (2) of this subsection.” The statute then provides that “[t]he court, in determining the particular sentence to be imposed, shall consider:”

- (1) the nature and circumstances of the offense and the history and characteristics of the defendant;
- (2) the need for the sentence imposed—
  - (A) to reflect the seriousness of the offense, to promote respect for the law, and to provide just punishment for the offense;
  - (B) to afford adequate deterrence to criminal conduct;
  - (C) to protect the public from further crimes of the defendant;

and

- (D) to provide the defendant with needed educational or vocational training, medical care, or other correctional treatment in the most effective manner;
- (3) the kinds of sentences available;
- (4) the kinds of sentence and the sentencing range established [in the Sentencing Guidelines];
- (5) any pertinent policy statement [issued by the Sentencing Commission];
- (6) the need to avoid unwarranted sentence disparities among defendants with similar records who have been found guilty of similar conduct; and
- (7) the need to provide restitution to any victims of the offense.

18 U.S.C. § 3553(a).

The defendant's criminal conduct in this matter is a serious offense which, weighed in view of the factors set forth in § 3553(a), support a sentence consistent with the nature of the offense along with the steps taken by the defendant to correct its criminal conduct. See 18 U.S.C. § 3553(a)(4) (Court shall consider the sentence applicable under the Guidelines). As explained below, the § 3553(a) factors justify an appropriately tailored sentence for the defendant.

1. The Nature and Circumstances of the Offense

By engaging in wire fraud offense, the defendant committed a serious crime over the course of several years. To compound the defendant's conduct, the fraud involved the selling of falsely remarked chips to various business entities as outlined in the Presentence Report ("PSR") at paragraphs 6-21. As the defendant admitted during his plea colloquy, he failed to ensure that the company was not selling falsely remarked chips despite the fact that he knew

there was a high probability that what was being sold was not what it purported to be. Such conduct militates in favor of a sentence of imprisonment.

2. The Defendant's History and Characteristics

As the PSR states, the defendant had a good childhood and he is in relatively good physical and mental health. He describes himself as a hard worker and very committed to his family and community.

The PSR, however, do not distinguish the defendant from most other white-collar criminals. *See United States v. McClatchey*, 316 F.3d 1122, 1135 (10th Cir. 2003) (“excellent character references are not out of the ordinary for an executive who commits white-collar crime; one would be surprised to see a person rise to an elevated position in business if people did not think highly of him or her”). The case law is replete with convicted felons who, despite their criminal conduct, appear to be compassionate and praiseworthy people. The Sentencing Guidelines do not, however, authorize a downward departure or variance merely because a defendant has shown kindness, even considerable kindness, to others or because he has been an active member in the community. Also, the Guidelines already take into account the defendant's lack of a criminal record by according him a Criminal History Category of I.

The argument that the defendant has been punished enough by the loss of prestige or loss of his good name as a result of the prosecution in this case should be rejected. First, history has shown that the risk of a felony conviction alone has not been sufficient to deter people from engaging in fraud. Second, according to this logic, one who is successful, wealthy, and highly regarded should not be sent to jail for committing the same crime that would justify a sentence of imprisonment for a less well-heeled and well-regarded defendant. This argument ignores the premise that from those who have the greatest advantages in life, more is expected. The Court

should reject the notion that successful people (like the defendant) should be sentenced more lightly than the poor and powerless because, for the former, the humiliation and shame of conviction alone (without any prison sentence) is more devastating than it would be for those who have enjoyed fewer advantages in life. Here, the defendant has a history of engaging in fraudulent conduct to enrich himself and his company and the sentence imposed should reflect that fact..

3. The Sentence Must Promote Respect for the Law

The sentence in this case must reflect the seriousness of the offenses, promote public respect for the law, and demonstrate that as a society we treat very seriously crimes involving fraud. When well-to-do citizens who earn income from engaging in a fraudulent scheme, like the defendant, repeatedly ignore our country's laws, they should be punished with more than a pat on the wrist. Thus, the sentence should rebut the commonly expressed sentiment that engaging in fraud is no big deal, and that it is acceptable to engage in such conduct without any real consequences.

4. The Court Should Consider General Deterrence

One of the factors the Court must consider in imposing sentence is the need for the sentence to "afford adequate deterrence to criminal conduct." 18 U.S.C. § 3553(a)(2)(B). General deterrence is an especially important goal in sentencing for criminal fraud offenses, because they can be used as a way to deter other similarly situated people from engaging in similar conduct.

In addition, the criminal conduct occurred over the course of several years. Consequently, the sentence needs to serve as a general deterrence to others who may choose to ignore the law by placing their own financial needs and goals ahead of their legal obligations.

Such a sentence will further send a message to those who are employed in this particular industry or who are contemplating doing the same, that there will be substantial punishment for engaging in such fraudulent conduct. A sentence that does not account for general deterrence sends the wrong message. As such, the sentence in this case should deter like-minded individuals and send a strong message that such criminal activity and flagrant disregard of the law will not be tolerated by this Court. *See* 18 U.S.C. § 3553(a)(2)(B).

V. CONCLUSION

The Government respectfully requests that the Court impose a just sentence in this matter.

Respectfully submitted,

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*/s/ Douglas P. Morabito*

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on December 3, 2015 a copy of the foregoing Government's Sentencing Memorandum was filed electronically and served by mail on anyone unable to accept electronic filing. Notice of this filing will be sent by e-mail to all parties by operation of the

Court's electronic filing system or by mail to anyone unable to accept electronic filing as indicated on the Notice of Electronic Filing. Parties may access this filing through the Court's CM/ECF System.

*/s/ Douglas P. Morabito*

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