

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA

Case No.: 18-60202-CR-DIMITROULEAS

UNITED STATES OF AMERICA

vs.

DALE SCOTT WOOD,

Defendant.

/

**RESPONSE TO PRESENTENCE INVESTIGATION REPORT AND SENTENCING  
MEMORANDUM**

COMES NOW the Defendant, Dale Scott Wood, by and through undersigned counsel, and hereby submits this response to the presentence investigation report and a sentencing memorandum in support of Defendant's position for sentencing.

The Presentence Investigation Report (PSR) provided by the United States Probation Office states that the correct offense level is a level 34, thus qualifying for a sentencing guideline range of 151 to 188 months. The Plea Agreement pursuant to Section 3E1.1(a) of the Sentencing Guidelines Plea entered into by the United States and Mr. Wood recommend that the Court reduce by three levels the sentencing guideline level applicable to the offense based upon Mr. Wood's recognition and affirmative and timely acceptance of personal responsibility. Additionally, the United States will recommend a sentence at the low end of the advisory guideline range

The Defendant, by and through counsel first makes his objection to the sentencing level in the Presentence Investigation Report. Second, the Defendant, would implore the court to evaluate all 18 U.S.C. §3553 factors in determining an adequate sentence. Lastly, the Defendant has filed a

Motion for In Camera Proceedings for certain sensitive parties that would like an opportunity to speak to the Court regarding this case and other matters.

**Statement of the Case**

On July 25, 2018, the Defendant, Dale Scott Wood, pled guilty to a one-count Information for Conspiracy to Commit Wire Fraud, in violation of 18 U.S.C. § 1349. According to the Information in this case, from in or around April 2011 through in or around November 2013, Dale Scott Wood conspired with Theodore Gunter Gies and other to commit wire fraud. It was the purposes of the conspiracy for the Defendant and his co-conspirators to unjustly enrich themselves by causing and concealing the unauthorized sale of, or other transfer of interests in, real properties owned by HPC and then convert the proceeds to their own use.

**Discretion of the Sentencing Court**

As this Court is aware, in *United States v. Booker*, 125 S.Ct. 738 (2005), the United States Supreme Court restored to sentencing judges their power to use their own discretion in determining appropriate sentences. The Fourth Circuit held “In the wake of Booker.... the discretion of a sentencing court is no longer bound by the range prescribed by the sentencing guidelines. Nevertheless, a sentencing court is still required to consult the guidelines and take them into account when sentencing.” *Id.* at 767. Consistent with the remedial scheme set forth in *Booker*, a district court shall first calculate (after making the appropriate findings of fact) the range prescribed by the guidelines. Then, the court shall consider that range as well as other relevant factors set forth in the guidelines and those factors set forth in § 3553 before imposing the sentence. *Id.* at 764-765. If the court imposes a sentence outside the guideline range, it should explain its reasons for doing so.

### **Sentencing Considerations**

It is respectfully submitted that neither defense counsel nor Mr. Wood underestimate nor downplay the nature, severity and gravity of the crime committed. Mr. Wood has violated 18 U.S.C. § 1349 by conspiring to commit wire fraud. The gravity of the matter at hand is not misjudged by defense counsel and certainly has not been taken lightly by Mr. Wood. The financial harm suffered by the victims and the effects of those acts are assumed to be very serious. However, it is respectfully requested that this Court consider, along with the U.S. Sentencing Guidelines, the following factors and analysis:

#### 18 U.S.C. § 3553. Imposition of a sentence

The 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 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 for—

(A) the applicable category of offense committed by the applicable category of defendant as set forth in the guidelines—

(i) issued by the Sentencing Commission pursuant to section 994 (a)(1) of title 28, United States Code, subject to any amendments made to such guidelines by act of Congress (regardless of whether such amendments have yet to be incorporated by the Sentencing Commission into amendments issued under section 994 (p) of title 28); and

(ii) that, except as provided in section 3742 (g), are in effect on the date the defendant is sentenced; or

(B) in the case of a violation of probation or supervised release, the applicable guidelines or policy statements issued by the Sentencing Commission pursuant to section 994 (a)(3) of title 28, United States Code, taking into account any amendments made to such guidelines or policy statements by act of Congress (regardless of whether such amendments have yet to be incorporated by the Sentencing Commission into amendments issued under section 994 (p) of title 28);

(5) any pertinent policy statement—

(A) issued by the Sentencing Commission pursuant to section 994 (a)(2) of title 28, United States Code, subject to any amendments made to such policy statement by act of Congress (regardless of whether such amendments have yet to be incorporated by the Sentencing Commission into amendments issued under section 994 (p) of title 28); and

(B) that, except as provided in section 3742 (g), is in effect on the date the defendant is sentenced.

(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.

As indicated, supra, as a result of *Booker/Fanfan and Gall/Kimbrough*, trial courts are no longer required to impose a sentence “within the ranges” provided in the United States Sentencing Guidelines. The recent United States Supreme Court decisions have given District Court Judges the ability to fashion a sentence that he or she feels is appropriate for each specific defendant. The recent United States Supreme Court decisions have given District Court Judges the ability to fashion a sentence that he or she feels is appropriate for each specific defendant. 18 U.S.C. §3553(a) mandates that the Court “impose a sentence sufficient, but not greater than necessary, to comply” with the purposes of sentencing set forth in the second paragraph of that same statute. A district court’s job is not to impose a ‘reasonable’ sentence it should impose “a sentence sufficient, but not greater than necessary, to comply with the purposes” of section 3553(a)(2). Reasonableness is the appellate standard of review in judging whether a district court has accomplished its task.” *United States v. Foreman*, 436 F.3d 638, 644 n.1 (6th Cir. 2006). In *Rita v. United States*, 127 S. Ct. 2456, 2463 (2007), the Court summarized the factors found in that second paragraph: the “(1) offense and offender characteristics; (2) the need for a sentence to reflect the basic aims of sentencing, namely (a) “just punishment” (retribution), (b) deterrence, (c) incapacitation, (d) rehabilitation; (3) the sentences legally available; (4) the Sentencing Guidelines; (5) Sentencing Commission policy statements; (6) the need to avoid unwarranted disparities; and (7) the need for restitution. See also *United States v. Hunt*, 459 F.3d 1180, 1182 (11th Cir. 2006).

The Defendant puts forth the following as recommendations addressing all the sentencing factors the Court is now at liberty, but certainly not required to consider. Upon knowledge that he was under a criminal investigation, Mr. Wood, alongside counsel, cooperated with law enforcement authorities and continues to do so with regards to this charge. He does not dispute the obvious, that this offense involves a significant amount of money. He is not minimizing his conduct and understands that he must face the consequences of his actions. Mr. Wood has no criminal history whatsoever and has not spent any time incarcerated. Before an Information was filed, Mr. Wood agreed to cooperate to the best of his ability with the United States Attorney and other law enforcement officials. Mr. Wood turned himself in to authorities in order to face this count. At the time of his arrest, he immediately accepted responsibility for his actions and never attempted to shift the blame on any other individuals.

As stated earlier, Mr. Wood had never been arrested, indicted or charged with any criminal activity until the current information. The Defendant has been an extremely productive member of society for all of his life. He has been an exemplary employee and has proven his abilities both as a family man and an employee. Mr. Wood has been nothing but a good member of society for most of his life.

With the decision in *Gall*, *Kimbrough* and *Booker*, the Court is now able to consider sentencing policy outside the United States Sentencing Guidelines. The Court may use the guidelines as advisory in determining the appropriate sentence for a particular defendant. In determining a sentence that will reflect the seriousness of the offense the court may consider other cases with similar conduct. Again, neither the defendant, nor defense counsel makes the argument that this charge is not a serious offense. The issue is how much incarceration is

appropriate to provide the deterrence that is desired by the justice system. Mr. Wood does not have any experience as a criminal. He has no experience at losing his liberty. He would implore the Court to sentence him to the minimal period of incarceration necessary and reasonable based on all the information the Court has before it. The court must lastly consider the need to protect the public from further crimes by the defendant. It is clear that Mr. Wood is not a hardened criminal with a record of deviant acts. In fact, Mr. Wood has been a productive member his entire life until he made the mistakes he made with this event. The public is not in the way of harm because of Mr. Wood's actions with regards to this case or any other factors within Mr. Wood's life or work events.

### **Conclusion**

Mr. Wood is remorseful for the events leading up to his arrest. He is currently suffering from his behavior and has been devastated by the reality of the situation. He will lose his employment, contact with his wife and children and his life will be completely changed. Based on the foregoing, the Defendant respectfully requests that this Honorable Court exercise its judgment to sentence Mr. Wood to a period of incarceration sufficient, but not greater than necessary to reach the ends of justice.

Other grounds to be argued *ore tenus*.

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing was efiled on March 13, 2019 and on all counsel or parties of record on the service list.

Respectfully Submitted,

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