

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA**

**Richmond Division**

**UNITED STATES OF AMERICA** )  
 )  
 **v.** )  
 )  
 **RUSSELL E. MACKERT,** )  
 )  
 **Defendant.** )

**Criminal No. 3:10cr257**

**GOVERNMENT’S SENTENCING MEMORANDUM**

The United States of America, through its attorneys, Neil H. MacBride, United States Attorney for the Eastern District of Virginia, Michael S. Dry and Jessica A. Brumberg, Assistant United States Attorneys, and Albert B. Stieglitz, Jr., Special Assistant United States Attorney, hereby submits its position with respect to sentencing factors. The United States has no objection to the Probation Officer’s determination that the defendant’s Offense Level Total is 36, and that his Criminal History Category is I. (*See* Pre-Sentence Report [“PSR”], Worksheet D.) The defendant’s Guideline Range is 188 to 235 months. *Id.* Pursuant to the factors contained in 18 U.S.C. § 3553(a) and for the reasons set forth below, it is the position of the United States that a sentence within this guideline range is appropriate, and respectfully requests that this Court sentence the defendant to the low end of the guideline range.

Argument

“[I]n imposing a sentence after *Booker*, the district court must engage in a multi-step process. First, the court must correctly determine, after making appropriate findings of fact, the applicable guideline range.” *United States v. Moreland*, 437 F.3d 424, 432 (4th Cir. 2006).

“Next, the court must ‘determine whether a sentence within that range serves the factors set forth in § 3553(a) and, if not, select a sentence [within statutory limits] that does serve those factors.’”

*Id.* (quoting *United States v. Green*, 436 F.3d 449, 455 (4th Cir. 2006)). Thus,

a sentencing court must consider “the nature and circumstances of the offense and the history and characteristics of the defendant” and the need “to reflect the seriousness of the offense,” provide “just punishment,” “afford adequate deterrence,” “protect the public,” and “avoid unwarranted sentence disparities among defendants with similar records who have been found guilty of similar conduct.”

*United States v. Hampton*, 441 F.3d 284, 287 (4th Cir. 2006) (quoting 18 U.S.C. § 3553(a)).

I. The Applicable Guideline Sentence

The Government has no objections to the PSR. The PSR calculates the defendant’s Offense Level Total as 36. This calculation includes: (a) a base offense level of 7; (b) a 22-level enhancement for more than \$20 million of victim losses; (c) a 4-level enhancement for more than 50 victims; (d) a 2-level enhancement for sophisticated means; (e) a 2-level enhancement for his role in the offense; (f) a 2-level enhancement for obstruction of justice; and (g) a 3-level reduction for acceptance of responsibility. (PSR, Worksheet D.). The defendant’s criminal history category is I. *Id.* The resulting guideline range is 188 to 235 months. *Id.*

II. The Sentencing Factors of Section 3553(a)

In addition to the Sentencing Guidelines, the sentencing factors set forth in Title 18, United States Code, Section 3553(a) support a sentence within the guideline range.

A. The Nature and Circumstances of the Offense

Given the Court's familiarity with the A&O scheme and the detail provided in the PSR regarding the defendant's role in that scheme, the Government will not provide a lengthy recitation of the nature and circumstances of the offense here. Unlike defendants Allmendinger, Oncale, and Abdulwahab (the "A&O Principals") – who were the masterminds and members of the conspiracy from the outset in late 2004 – defendant Mackert joined the conspiracy in August of 2007. (PSR, at 16.). Another important distinction between Mackert and the A&O Principals is the difference in the level of personal enrichment that each enjoyed as a result of their participation in the conspiracy. While Allmendinger, Oncale, and Abdulwahab each received roughly \$10 million from the A&O scheme, defendant Mackert received approximately \$521,000.

Despite these significant differences between Mackert and the A&O Principals, after Mackert joined the conspiracy, he had a significant role in the continuation of the A&O scheme that enabled A&O to accept approximately \$20 million of additional investor funds under false pretenses. *Id.* at 25. He actively and extensively used his knowledge as an attorney to facilitate the sham sales transaction of A&O to offshore entities that hid Oncale and Abdulwahab's continued ownership and involvement in the A&O companies. *Id.* This, in turn, thwarted the efforts of state regulatory agencies that were investigating A&O. After A&O stopped accepting new investor funds, Mackert took the central role in lulling investors regarding the safety of their

investment funds, which also delayed discovery of the fraud. *Id.* at 19-20, 23. In order to continue preventing authorities from discovering the fraud, Mackert, Oncale, and Abdulwahab agreed that they would “stick to the story” regarding the sham sales transaction. Mackert did so by filing multiple false affidavits, under oath, in federal civil proceedings. *Id.* at 28.

B. History and Characteristics of the Defendant

Russell E. Mackert was raised in a stable home with adequate financial support. (PSR ¶ 39.) He graduated from college and law school, and began practicing as an attorney in 1985. (PSR ¶¶ 40-42.) While the defendant’s legal career prior to his involvement with A&O was not especially lucrative, it appears to have been stable. (PSR ¶¶ 55-58.)

The defendant was married for three years and had one daughter from that marriage. (PSR ¶ 48.) He has been in a long term relationship with his fiancée for the last nine years and she continues to be supportive. *Id.*

Prior to his involvement in the instant offenses, the defendant has no criminal history. (PSR ¶¶ 32-37.)

From the numerous interviews of individuals familiar with the defendant during the investigation, it appears that Mackert was motivated to join the A&O scheme because he was not especially successful as an attorney and he observed Abdulwahab, Oncale, and Allmendinger getting rich as a result of A&O. Given his lack of criminal history and his personality – which his father accurately described as “not necessarily aggressive” – it is highly unlikely that Mackert would have engaged in criminal conduct but for Abdulwahab’s active solicitation of Mackert’s involvement. It is undeniable that Mackert engaged in multiple instances of deceit, under oath and to law enforcement, to hide the scheme. But, once confronted by federal law enforcement

agents, he was fully forthright, cooperated in the investigation, and appeared to show genuine remorse for his actions.

C. The Seriousness of the Offense

It is difficult to overstate the seriousness of the offense. The scheme resulted in the loss of more than \$100 million – approximately \$20 million of which was received by A&O after the defendant joined the conspiracy – from more than 800 investors. Many of these investors were elderly and their investment money was often their retirement funds. The impact of the offense on the many of A&O's investor victims has been nothing short of disastrous. (*See, e.g.*, PSR, ¶¶ 22-24.)

The defendant's status as an attorney who actively facilitated the fraudulent scheme by utilizing his legal training is especially abhorrent. In addition, the defendant utilized his attorney IOLTA trust account to launder the proceeds of the crime and actually carried on his person \$10 million of cashier's checks offshore in an attempt to hide Abdulwahab and Oncale's ownership of those fraud proceeds. (PSR, at 25-26.).

D. The Need to Afford Adequate Deterrence

A sentence at the low-end of the guideline range will be adequate to deter Mackert from future misconduct.

In addition, a sentence at the low-end of the guideline range will generally deter potential white-collar criminals from engaging in similar conduct, particularly those lawyers who may consider facilitating fraudulent schemes through their status as attorneys and their legal training.

E. The Need to Protect the Public from the Defendant's Future Conduct

The United States believes that a sentence at the low end of the guideline range is appropriate to protect the public from any potential criminal behavior by the defendant.

F. The Need to Avoid Unwarranted Sentencing Disparities

Mackert pleaded guilty and accepted responsibility for his actions. In light of Mackert's role in the criminal scheme, a sentence at the low end of the guideline range would not be disparate compared to the other related defendants.

Conclusion

For the reasons stated above, the United States respectfully asks this Court to sentence the defendant at the low end of the guideline range.

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I hereby certify that on the 20th day of May, 2011, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system, which will send a notification of such filing (NEF) to the following:

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I also hereby certify that on the 23rd day of May, 2011, I hand-delivered a true and accurate copy to the following:

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