

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA
Criminal No. 08-299 (RHK)

UNITED STATES OF AMERICA,)	
)	GOVERNMENT'S POSITION
Plaintiff,)	REGARDING SENTENCING AND
)	MOTION FOR DOWNWARD DEPARTURE
v.)	PURSUANT TO U.S.S.G. § 5K1.1
)	
ROBERT DEAN WHITE,)	
)	
Defendant.)	

The United States of America, by and through its attorneys, B. Todd Jones, United States Attorney for the District of Minnesota, and Joseph T. Dixon III, John R. Marti, and Timothy C. Rank, Assistant United States Attorneys, hereby submits this Position Regarding Sentencing and Motion for Downward Departure pursuant to U.S.S.G. § 5K1.1.

Robert White's complicity in Thomas Petters' fraud was essential to the devastating success of that scheme. Even prior to his arrival at Petters Company Inc. ("PCI"), White helped Petters find investors upon whom Petters would then prey. In the late 1990s, White was recruited by Petters to join PCI for the precise purpose of fabricating bank records, a task that Petters' other assistant, Deanna Coleman, could not accomplish on her own. Day in and day out for over ten years, Robert White forged documents and lied to investors. Throughout his time at PCI, White attempted to exercise control and influence over the plans and designs at PCI, providing guidance and support, at one point, even claiming that

the fraudulent enterprise was a "democracy of two" - namely Petters and himself. Gov't Ex. 27C.090. While this claim was, of course, inaccurate - Petters himself acknowledged his control and responsibility for the fraud, see, e.g., Gov't Ex. 27Z - White was a mature adult when he joined the fraud and willfully participated for over a decade, until an FBI agent walked through his office door on September 24, 2008.

As a result, individuals and institutional investors were devastated, resulting in lost dreams, sleepless nights, and difficult, bleak futures. As Mr. White himself and other conspirators are now personally experiencing, it is very hard to recover and build a secure financial future in the wake of a complete financial loss, especially in the latter years of a person's life. The harms inflicted by Thomas Petters, with Mr. White's full and knowing assistance, strain comprehension.

Robert White's conduct was deliberate and deceitful, enduring for over a decade. Such conduct warrants severe punishment. Yet, immediately after he was confronted by law enforcement on September 24, 2008, and during the course of the government's investigation, White took repeated steps to substantially assist the government's investigation and the receiver's efforts to collect funds for the benefit of victims. But for this assistance, this investigation would have been prolonged, and Thomas Petters would likely have avoided responsibility for his fraud (either by fleeing the

jurisdiction or committing suicide). The Court should justly give significant credit for the substantial assistance provided by Robert White when fashioning an appropriate sentence.

I. Robert White's participation in Thomas Petters' fraud scheme.

In about 1998, Thomas Joseph Petters approached Robert White and begged for a simple favor. White was an experienced broker and small businessman who was familiar with finance and accounting. Petters solicited White to forge bank records that Petters would then use to deceive a creditor. Petters assured White that this favor would be short in duration, and that no one would lose money. White agreed. He did not request any compensation for his efforts. Petters later paid White about \$10,000. White, unknowingly, was now captive in a web of fraud that would grow to an unprecedented and staggering size. Petters asked for a second fraudulent favor, another set of forged bank records to reflect transactions that never occurred. Once again, White agreed. Petters then requested that White organize records of the fraud, at which point White discovered, 10 years prior to the beginning of his cooperation with the government, that Petters' financial kingdom was a sham, that investors had lost funds, and that Petters already owed investors over \$100,000,000.

At trial, White testified that when he discovered the size of the fraud, it was too late for him to withdraw. In that judgment, Robert White was wrong. When Petters first approached White,

begging White to forge bank records, White could have said no. When Petters again approached White, White could have walked away. When White discovered the size of the fraud in 1998, White could have notified law enforcement. In the years to come when Petters continually directed White to forge documents, to lie and deceive, White agreed to do so. To each request from Petters, White could have said no. Sadly, he did not.

During this period, Petters repeatedly promised White and others that he would find a way to "fix" the fraud scheme. Caught in a present reality of personal riches, with the promise (as unrealistic as it appears now) that Petters would "fix it" and there would be no consequences for this fraud, White continued deceiving and defrauding. Petters' repeated promises, both to his co-conspirators and also to his victims were often too good to be true, and White was in the unique position to know that fact. Everyday he saw the enormity of Petters' capacity for deceit.

Yet White also shared in that capacity. Evidence at trial established that White and Coleman defrauded Petters by diverting funds through ONKA funding. Perhaps if White had not been thoroughly corrupted by Petters, he may not have stolen from Petters. This incident demonstrates that White was not a pure captive of Petters and could and did independently engage in fraud.

White profited handsomely for his complicity in the scheme. White himself was paid about \$14.5 million. Gov't Ex. 7A. Defense

counsel suggests that White failed to cash one payment from Petters because he had "long since mentally withdrawn from the scheme." Def's Position on Sentencing, p. 4. Not true. Day in and day out, White continued to forge documents, up until September 24, 2008, when federal agents appeared at his door.

The unescapable truth is that without White's daily assistance through the last day of the scheme, the Petters' fraud scheme would have quickly collapsed, and fewer victims would have been defrauded of less money. Robert White is deeply responsible for this tragedy, he admitted so in his testimony, and his sentence should reflect that fact.

As with any Ponzi scheme, the ultimate victims who suffer the financial impact are those who invest at the end. Among these victims are at least 10 pastors, 3 missionaries and dozens of retired, elderly individuals who invested their respective life savings based on the false promises made by the defendant and his scheme. In addition, at least half-a-dozen nursing home victims have lost the funds they had saved to provide for their long-term care. Churches, non-profit groups and family trusts are also among the victims. These organizations have suffered the loss of funds needed for building projects and organizational emergencies as well as the provision for handicapped individuals. The harms suffered by the victims are real, grievous, and permanent.

II. Sentencing Guidelines

The pre-sentence investigation's offense level of 37 for the defendant's conduct - a level agreed to by both parties - fairly and accurately represents the gravity and magnitude of the defendant's conduct during the execution of the scheme. This guideline range gives rise to a guideline sentence of 210 to 262 months in prison. But for White's cooperation in this prosecution (discussed later), a sentence of 210 months would be fair and just.

The losses are staggering. Moreover, for purposes of the Guideline calculation, the Court calculates loss based only on the pecuniary harm that resulted from the offense, both "monetary" harm as well as harm that "otherwise is readily measurable in money," U.S.S.G. § 2B1.1, app. notes 3(A)(i), 3(A)(iii) & 3(c). The loss calculation does not include intangible losses and losses that are not otherwise sufficiently concrete. Notably, these harms - such as the reputational harm suffered by victims and the individuals, institutions and businesses associated with the defendant - may be, and should be, considered in terms of an appropriate sentence pursuant to 18 U.S.C. § 3553(a).

III. Sentencing Considerations

In addition to the guidelines, the Court must consider the factors set forth in 18 U.S.C. § 3553(a), which include "the nature and circumstances of the offense and the history and characteristics of the defendant;" "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;" and "the need to avoid unwarranted sentence disparities among defendants with similar records who have been found guilty of similar conduct"

Robert White is now an older man who, until he met Thomas Petters, had never been charged with a serious crime. Like many of Thomas Petters' victims, White's life is now in shambles. As is clear from observing his testimony at trial, White is a broken man deeply shaken with guilt and remorse. He now fully accepts responsibility for his conduct. Balanced against these facts is the clear reality that Robert White was fully complicit in a decade long deceit. The Court should consider all these factors in fashioning a sentence that reflects and thereby promotes respect for the law, provides just punishment, and affords adequate deterrence.

Defense counsel suggests that White should receive a sentence that is similar to the sentence that this Court may impose on Coleman. This suggestion is unsupported by the evidence, and unwarranted. For a decade White had every opportunity to terminate

this fraud scheme by turning himself in. He chose not to. In the end days, he spoke repeatedly with Coleman about ending the fraud. White never took the next step, transforming words into acts. Coleman did just that, voluntarily subjecting herself to criminal prosecution. For two weeks after September 8, 2008, when Coleman cooperated with the government, Robert White could have turned himself in. The sad reality is that he chose not to, remaining caught up in Petters' web of lies and deceit until agents appeared at his door. For these reasons, it is error to suggest that White and Coleman deserve the same sentence.

Because the Court has declined to enter a restitution order in this matter, the government will seek forfeitures of personal assets with the intent that those assets be made available to victims through the Department of Justice's forfeiture remission process. In lieu of restitution, the Court may also consider other financial sanctions as well in fashioning an appropriate sentence.

IV. Motion for Downward Departure under U.S.S.G. §5K1.1.

As set forth above, Robert White's assistance in the investigation and prosecution of this matter was significant. While White's defense counsel's description and judgments regarding the cooperation miss the mark in significant respects, the government agrees that White's cooperation was substantial and should be fully considered by the Court at sentencing.

On September 8, 2008, Deanna Coleman was interviewed at the U.S. Attorney's Office. During this interview, Coleman reported that White would cooperate with the government, and that she and White had previously talked about consulting with an attorney and turning themselves in together. Desiring to protect the covert investigation, the government directed Coleman not to communicate to White that she had notified law enforcement. During the next two weeks, Coleman recorded numerous significant conversations with the participants in the fraud, substantially advancing the investigation. Notably, Coleman also advised the government that she had recorded conversations with White wherein White suggested to Coleman that they consult with counsel and turn themselves in. For the short two week period during which Coleman was cooperating with the government, the government directed Coleman not to encourage or discourage White from taking any particular course of action, thereby allowing him to make his own decisions. This direction was necessary to protect the security of the investigation.

Significantly, although White participated in the fraud for over a decade, he did not notify law enforcement of the fraud or offer to cooperate until he was confronted by law enforcement on September 24, 2008. In sharp contrast, Coleman did. The importance of that act simply cannot be overstated. While defense counsel suggests Coleman was acting in self-interest, her conduct

with the government simply does not match that view. More to the point, defendant White himself has indicated that he does not blame Coleman whom he described as a simple "farm girl."

On September 24, 2008, law enforcement agents executed the first search warrants in this case. In connection with these warrants, agents contacted White in his office space at Petters Group Worldwide. White immediately cooperated, providing a detailed description of the Petters' fraud scheme and confessing his role in that scheme. White also directed agents to numerous relevant documents.

One week later, when White was represented by counsel, Petters contacted White and encouraged White to leave the country. Petters insinuated that Larry Reynolds and he were also going to flee. After conferring with counsel, White contacted the FBI. Under the direction of agents, White recorded a conversation with Petters in which Petters referred to Marc Rich, and repeated his prior statements concerning fleeing. White's cooperation alerted the government that Petters was obstructing justice by encouraging material witnesses to flee, and also planning to flee himself. The government quickly arrested Petters and Reynolds on a complaint and warrant, and successfully moved to keep Petters detained pending trial.

One week later (two weeks after his first interview), on October 8, 2008, White entered his guilty pleas. White was the

first person to walk into open court, acknowledge the existence of the massive fraud, and accept responsibility for his role. That first step was a substantial and important moment in the momentum of the case. His quick plea was significant in motivating other defendants to cooperate in this matter and significantly advanced this case.

From October 2008 through trial, White participated in about 20 interviews, including testifying before the grand jury. White repeatedly reviewed bank records, email, and business records, providing the government with valuable insights into the facts of a conspiracy that extended over a decade.

At trial White testified over the course of several days, and was subjected to extensive cross examination. His testimony was fully corroborated by recordings, documents, and the testimony of other witnesses, and was also important to the government's success in this case.

Finally, White also stipulated to the appointment of a receiver under 18 U.S.C. § 1345. He has fully cooperated with the receiver in disclosing and turning over assets for the purpose of providing restitution to victims.

In summary, once contacted by law enforcement, White substantially assisted the prosecution and investigation of this matter. This assistance was timely and significant. The

government moves under U.S.S.G. § 5K1.1 for a departure from the advisory sentencing guideline range.

V. Conclusion

Thomas Petters recruited Robert White into a staggering fraud scheme, and then relied on Robert White to execute that scheme by creating over 10,000 forged documents. The scale of White's fraudulent conduct is difficult to comprehend, and would fully warrant a sentence of 210 months but for White's cooperation. This cooperation was notable and fully warrants a substantial departure under the advisory sentencing guidelines.

Dated: 7/7/10

Respectfully submitted,

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s/ John R. Marti

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