

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

UNITED STATES OF AMERICA,)
Plaintiff,)
)
vs.) Case No. CR-08-30-RAW
)
PHILLIP LEVAUGHN RAGLIN,)
Defendant.)

SENTENCING MEMORANDUM

Counsel asks for less time than the guidelines contemplate. Most important to this argument is the youth, potential, and characteristic of the man. Also important is the grave impact of seven to eight years in prison on such a person. The Court should also consider how similarly situated defendants - and the financial bandits of today- are getting off nearly scot free while Phillip goes to prison.

HISTORY

Phillip Raglin is a unique individual. Initially, he's a well-spoken, intelligent young black man raised in a small Oklahoma town, an exception to a regrettable rule of poverty and unemployment among his contemporaries. He's a 23 year old young man who thinks he has the business acumen of someone twice his age. He was 21 when he began soliciting funds from investors and has never really had a college education, but thinks he is as knowledgeable as a Wharton School of Economics graduate. He is in jail, and will soon go to prison, but always greets his counsel with a smile, optimism, and enthusiasm. Most who know him, including government investigators, say he is likeable and smart.

Phillip was born to a family of modest means. His family is deeply religious, and his upbringing has imprinted him with Christian views. When he got old enough to go to high school, he left his family to attend school in Wagoner. He tells counsel he left his family home because of religious differences; his family had little belief in material belongings and earnings, and Phillip thought otherwise. He relocated himself to Wagoner, where he lived with a local district judge whose son was a friend of Phillip's. Teachers and contemporaries report he was exceptionally gifted while in school. He would read encyclopedias, and draft long reports about money and business. People who counsel has spoken to say everyone believed he was intended to succeed.

Phillip is supremely confident and optimistic. That kind of explains the information he told the Pretrial Officer about prospective income and investments. Counsel's experience is that Phillip always believes that the situation will bear out and his abilities will be recognized. Phillip wants to be recognized and be respected for his intelligence.

Phillip did not always intend to defraud his investors. He began with a vision to take some of his ideas about finance and investing and make money for people he knew. Not only did he want to benefit himself, he thought he could benefit others by making them money. However, he got too big for his britches. He was swept up in his belief that he knew more about investment and finances than anyone else. He believed that leveraging funds - taking little amounts of money and getting big capital from debt to invest (sound familiar?) would provide money to burn. He spent other people's money on extravagant items thinking he had earned it, and gave money to churches and schools that was not his to give. He made mistakes and did criminal acts, but throughout he thought he would turn his situation around. He thinks that still.

ISSUES AND ARGUMENT

The federal sentencing statute, 18 U.S.C. § 3553(a) lists seven factors that a sentencing court must consider. The first factor is a broad command to consider "the nature and circumstances of the offense and the history and characteristics of the defendant." 18 U.S.C. § 3553(a)(1). The second factor requires the consideration of the general purposes of sentencing, including: "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." § 3553(a)(2). The third factor pertains to "the kinds of sentences available," § 3553(a)(3); the fourth to the Sentencing Guidelines; the fifth to any relevant policy statement issued by the Sentencing Commission; the sixth to "the need to avoid unwarranted sentence disparities," § 3553(a)(6); and the seventh to "the need to provide restitution to any victim," § 3553(a)(7).

Sentencing guidelines are truly just advisory, as the Supreme Court's recent decisions in Gall vs. United States, 128 S.Ct. 586 (2007), and Kimbrough vs. United States 128 S.Ct. 558 (2007), recently made "pellucidly" clear (to use Justice Stevens's expression). While the district judge must still consider the guidelines, the judges may consider nearly all the facts in mitigation at sentencing, even those upon which the guidelines discourage or prohibit reliance. Kimbrough even permits a district judge to give a particular guideline less weight if the judge believes that it will categorically lead to a overly harsh punishment.

NATURE AND CIRCUMSTANCES OF THE CRIME

There is no easy way to significantly discount the gravity of the nature and circumstances of the offense. As attested to by letters to the Court from the investors, Phillip took money from friends and family. People dipped into their retirement funds and borrowed money to take advantage of Phillip's plan. He told people that their investments were in no danger, and he promised them a 30 percent return on their money.

What of the adage, "A fool and his money are easily parted?" How about, "If it sounds too good to be true, it probably is?" Phillip committed fraud; there is no doubt. But the fact that people were willing to take such a risk on such an audacious sounding plan, thinking they were beating the system by relying on such a scheme, somewhat obviates Phillip's guilt.

Consider this: Thousands of mortgage brokers and lenders duped millions of Americans into believing the impossible when they gave a homeowner an adjustable rate mortgage, or a balloon payment loan, letting the borrower hope that the prospect of money in the future would save them. In that vein, deregulation of the banking industry allowed financial firms to bet billions of dollars "on the margin" backed by nothing but a fraction of actual capital. Rampant greed, misinformation, and outright fraud led to current financial crisis. Market executives at massive financial firms took wild risks with other people's money, made incredibly bad decisions, and look to be bailed out. All the while, and continuing, the executives of the organizations are paid royally. And Phillip, who stole nothing compared to those men, will be convicted and sent to prison for years.

Further, the actual loss to Phillip's investors is less than the intended loss figures guiding the sentence. The Oklahoma Department of Securities reviewed some of the claims comprising the

intended loss - \$1,095,257 - and approved only \$871,251 for reparation. According to Patty Labarthe, counsel for the department who froze Phillip's accounts, forty one percent (41%), or approximately \$365,000 of the money taken in by Phillip and Joe Layne has been repaid. That money came from Phillip's bank accounts. He may have taken that money, but it ultimately went back to the investors. They may count themselves lucky when compared to people looking at their 401K's.

Considering the actual loss instead of the intended loss shaves two points off the offense level. Without the incorrect conclusion that Phillip obstructed justice, that adjustment takes his guidelines range to 70 to 87 months. That large remaining sentence is due in large part to the guidelines blind reliance on money figures as the driving force of a sentence. Since Booker, Kimbrough, and Gall, courts have become much more wary of the guidelines approach. Since the amount of actual or intended loss cannot be as easily calculated as drug type or quantity in most cases, attention should shift from a purely arithmetic calculation under the loss table to an individualized analysis of other factors contributing to loss. Application of the loss table without regard to Phillip's particular characteristics leads to unjust results that fail to accurately reflect his individual culpability.

**DISPARITY AMONG ACCOMPLICE'S SENTENCE, AND CONSIDERATION OF
WHITE COLLAR CRIME CASES.**

Both specifically and generally when considered rationally, the guideline sentence stated in the PSR is excessive and wrong. Compared to his accomplice's sentence, the guideline sentence is wildly disparate. Compared to the many white collar crimes around the country, it warrants variance.

According to sentencing commission, between 2003 and 2007, the average sentence imposed for an economic crime conviction increased from 22.4 months to 26.2 months and the median from

15 months to 18 months. For fraud crimes in particular, the average sentence between 2003 to 2007 increased from 14.4 months to 19.0 months. The PSR says Phillip deserves a 108-120 month sentence.

A case to consider comes from the Western District of Arkansas, United States vs. Coughlin, Criminal No. 06-20005. Defendant Coughlin was the former chief operating officer, executive vice president and vice chairman of the board of Wal-Mart Stores, Inc.. Coughlin pleaded guilty to wire fraud and tax evasion charges in a case involving a loss of over \$400,000. In 2006, Judge Robert Dawson of the Western District of Arkansas sentenced Coughlin to five years of probation and 27 months of home detention with an electronic monitoring device, together with 1,500 of community services.

On appeal, the Eighth Circuit reversed the sentence, and remanded for resentencing. 500 F.3d 813, 814 (8th Cir. 2007). On remand, the district judge gave Coughlin the same sentence, relying on Section 3553(a) factors that showed that probation and home detention would accomplish the goals of sentencing more effectively than a prison term. The Coughlin case is a potent reminder that when loss is not the principal driver of white-collar sentences, courts can look beyond the offense alone to craft more individualized sentences that account for the factors in Section 3553(a). The fraud/theft guideline expressly acknowledges that in some cases the offense level may “substantially overstate[]the seriousness of the offense” thereby warranting a different sentence. USSG § 2B1.1 Application Note 19(C).

Another notable case is United States vs. Tomko, from the Third Circuit. 498 F.3d 157 (3d Cir. 2007) *vacated on panel reh’g* 513 F.3d 360 (3rd. Cir. 2008). In Tomko, the district court sentenced a defendant in a tax fraud case to home detention rather than to a guideline range of 12

to 18 months imprisonment. Prior to Gall, the Third Circuit reversed this sentence. However, after Gall, the Third Circuit granted a motion for rehearing and vacated its prior decision. Although the Court issued only a short order announcing that the motion for rehearing had been granted, it stands to reason that Gall played some part in this decision.

Regarding Phillip's accomplice: The PSR and the guidelines expect that Phillip fare much worse than the man who stood next to him to commit the crime. Joseph Layne is the son of prominent local Wagoner minister and was charged with Phillip in state court. Wagoner County District Court, case no. CF-2007-190. Joe Layne provided the entree' for Phillip with investors, took part in the individual meetings with Phillip and investors, and lent his credibility to the endeavor.

Layne was never charged in federal court, and in April 2008 pleaded guilty to some state counts and was given a five year deferred sentence, and restitution of \$18,000. The court ordered him to pay \$50 per month as restitution, with the amount to be reviewed in one year. Any finding of guilt has been deferred until April 1, 2013. On that date, Layne will be allowed to withdraw his plea of no contest, and his record will be expunged. He received no felony conviction. Joe Layne was represented by Tulsa attorney Rob Nigh, and his firm.

The federal sentencing statute counsels the district court to shape a defendant's sentence in a way to fulfill "the need to avoid unwarranted sentence disparities," § 3553(a)(6). There is a vast difference in the PSR's recommendation of years in prison versus the slap on the wrist that Layne got. While the PSR characterizes Phillip as the leader/organizer, the reality is that Layne's deceit was integral to the scheme.

A likely response to this argument is that Phillip was in charge of the enterprise, and got the lion's share of the proceeds. As noted, Layne was no patsy, he took part in all the recruiting of the

investors. Regardless, the guidelines have already taken into account Phillip's "role in the offense" as a leader/organizer by applying USSG § 3B1.1(c) to Phillip's sentence range. Taking away the application of that guideline to Phillip's advisory range of punishment would still put his sentence at 87 to 108 months, still a quantum leap from Layne's sentence of probation. Did Joe Layne, who was not the leader/organizer, but still took an active role in the crime, get sentenced to 87 to 108 months? Clearly not. The disparity of the two sentences provide a compelling rationale for variance.

The government could also argue that Layne was a co-operator, willing if necessary to testify against Phillip. That never happened. If Layne did anything, he provided corroboration of details already known to investigators. However, for basically nothing more than hiring an excellent attorney and pleading guilty, he avoided the draconian treatment of the federal court system and its mechanical application of cookie cutter sentencing. It's not fair that Phillip is looking at years in prison. Counsel asks the Court to consider the grave effect of a felony conviction, home detention, or extended probation on Phillip's life.

HISTORY AND CIRCUMSTANCES OF THE DEFENDANT

Many people who counsel has spoken to describe Phillip as gifted, talented, and a person who people had always believed would achieve great things. Counsel for the Oklahoma securities commission told counsel that, in her 24 years of practice with securities and securities fraud, she had never seen anyone so young who had organize such a scheme. She told counsel, "[i]f he had gone a different way he could have done great work." Phillip's high school teacher said the same thing.

The mandatory guidelines once forbade a district judge from recognizing the reality that young people sometimes make horrible mistakes, and still deserve leniency and forgiveness. The Supreme Court has recognized that a youth's lack of maturity and an undeveloped sense of

responsibility are qualities that "often result in impetuous and ill-considered actions." Gall vs. United States, 128 S.Ct. 586, 601 (Citing with approval district court's consideration of immaturity at the time of the offense as a mitigating factor).

This is a crippling conviction for a young man like Phillip. Counsel asks the Court to consider the backdrop to this tragedy. Phillip came from a good family, and continues to have strong family support. But somehow as he grew up, he was imbued with the belief - rightly or wrongly - that he was destined for something better in his life. Armed with glibness and a supreme sense of confidence, he struck out to make his fortune.

Somewhere along the way he was overtaken with a sense of entitlement. He began to spend money he should have invested. He gave thousands of dollars to churches and his school, trying to become the finance impresario he thought he was. He started to lie to continue to amass money to support his public image. He took money that was not rightly his. For this, he has suffered public ridicule among the people he wanted to impress. He has gone to jail, and lived among murderers, child molesters and drug dealers. He has fallen from grace, and will never entirely fulfill what he could have been.

CONCLUSION

Phillip made mistakes and deserves punishment. He hurt people. How to craft a punishment, to protect the public, to teach Phillip a lesson, to keep this from happening again? How to craft a punishment that accomplishes those goals, but also nurtures a promising mind and molds him into a productive citizen? Nearly 10 years in prison is throwing away so much potential, and really does nothing to serve our society. Compelling factors - Phillip's youth, the disparity in sentences and treatment for similar crimes, and his potential - allow the Court to try to fix something without

throwing it away. Supervised probation, home detention, banning Phillip from a computer, financial oversight, and forbidding him from working in investment and sales, will serve to protect the public. The felony conviction and the fall from grace serves to punish him. The Court - unfettered by the guidelines - has the chance to do good things to fulfill society's goals and try to make a positive from a negative.

Respectfully Submitted.

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CERTIFICATE OF SERVICE

I hereby certify that on the 24th day of September, 2008, I electronically transmitted the foregoing document to the Clerk of Court using the ECF System for filing and transmittal of a Notice of Electronic Filing to the following ECF registrants:

Ms. Susan Dickerson Cox, Office of the United States Attorney - susan.cox@usdoj.gov

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