

to defraud the public without giving him a significant time period to reflect upon his misdeeds and redirect that mind to legitimate efforts.

The very nature of a Ponzi scheme preys upon the wishful thinking, and perhaps, sometimes, greed, of its victims. They are lured into believing the scheme is a legitimate investment through seeing the manner in which the defendant lives (his extravagances and his “generosity” with other people’s money to charitable causes) and through the “returns on investment” to early victims made with funds solicited from later victims. The fact that victims relied upon the defendant’s scheme does **not** “somewhat obviate[s] Phillip’s guilt” as he argues. Memorandum at 4. Instead, such reliance simply illustrates the success of the defendant’s Ponzi scheme.

Defendant argues that the guidelines should be calculated using actual rather than intended loss. This position is not the position of the United States Court of Appeals for the Tenth Circuit. That Court has made it clear that intended loss is the first measure of loss for guidelines calculations where it can be determined. See United States v. Gallant, 537 F.3d.1202, 1238 (10th Cir. 2008). It is immaterial to a loss calculation that the Oklahoma Department of Securities was successful in recovering a substantial amount of the money taken from investors although it is highly relevant to a determination of restitution.

Neither is a guideline sentence in this instance disparate to other appropriate sentencing. Defendant’s sentence should not be compared to that of Mr. Layne in state court. Mr. Layne was not the mastermind of the scheme to defraud, nor did he profit greatly from

the scheme: for example, access to a leased vehicle was not the same as ownership of a luxury vehicle with over \$60,000.00 in accessories. Mr. Layne simply believed that defendant had unique investment knowledge and parroted to investors the information he had heard from the defendant. Defendant's sentence should be compared to that of other operators of Ponzi schemes. In two other such cases prosecuted in the Western District of Oklahoma by the undersigned, instigators of Ponzi schemes pled to a single-count Information (pursuant to plea agreement) charging a violation of Title 18, United States Code Section 1957 and received sentences within the sentencing guidelines. Marsha Schubert's Ponzi scheme was a multi-million dollar fraud. She received a ten (10) year sentence in federal court and an additional sentence in her state court prosecution. Merle William Hickman, Sr., received a federal sentence of 97 months for his multi-million dollar Ponzi scheme and also pled to state charges. Neither Schubert nor Hickman commenced an additional fraud once confronted by an investigating authority. Defendant should receive a sentence within the guideline range of 108-120 months.

Defendant's life of lies is long-standing. At his initial appearance before United States Magistrate Judge Steven Shreder, defendant submitted a financial affidavit reflecting that he was a millionaire who had made \$50,000.00 per month (\$3 million in the month prior to filing the financial affidavit) . He began a new scam once he was ordered to stop operating Raglin Industries. He promised Raglin Industries investors he had the ability to give them a 30% return on their investments. He has not been forthright concerning his

education. He apparently was not honest with a former employer. His father testified at his detention hearing that he was prone to “exaggeration”- as a child he had convinced other children in the neighborhood that he had an airplane in his garage when there was no airplane. Defendant’s lies to family, friends, church members, and community leaders should be punished by a significant term of incarceration.

Respectfully submitted,

s/Susan Dickerson Cox
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Certificate of Service

I hereby certify that on the 25th 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 registrant:

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