

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

UNITED STATES OF AMERICA,

Plaintiff,

MEMORANDUM and ORDER

02-CR-09-S-01

v.

DAVID J. YEAZEL,

Defendant.

Presently pending before the Court in the above entitled matter is a limited remand from the United States Court of Appeals for the Seventh Circuit to determine whether this Court would impose defendant's original sentence had the sentencing guidelines been merely advisory.

In U.S. v. Paladino, 401 F. 3d 471, 484 (7th Cir. 2005), the Court advised as follows:

Upon reaching its decision (with or without a hearing) whether to resentence, the District Court should either place on the record a decision not to resentence with an appropriate explanation," *United States v. Crosby, supra*, 397 F. 3d at 1920, or inform this Court of its desire to resentence the defendant.

The Court has considered the views of counsel, the advisory sentencing guidelines, the purposes of sentencing and the reasons for its original sentence, determining that it would impose the same sentence.

As justification for its original sentence the Court considered the following facts:

From January 1997 through September 1999 defendant obtained about \$4,000,000 from various individuals promising to invest their money in the stock market or hold it in a Merrill Lynch Cash Management Account. He did not fulfill these promises but instead used the money to finance a lavish lifestyle for himself. The loss to the victims was \$3,548,119.40.

Defendant had violated an administrative order issued by the Wisconsin Department of Financial Institutions on October 28, 1999 which prohibited him from transacting any business in Wisconsin as a securities broker or dealer without a license.

Defendant obtained or attempted to obtain false letters about the nature of the victims' investments. While on pretrial release defendant violated the conditions of his release by engaging in self employment and having contact with persons on the no contact list.

The Court determined defendant's offense level to be 6 and increased it 18 levels because the loss was more than \$2,500,000. Two levels were added because the offense involved more than ten but less than fifty victims. Two levels were added because the defendant committed some of the relevant conduct in violation of an administrative order entered by the State of Wisconsin on or about October 28, 1999. This enhancement was upheld by the United States

Court of Appeals for the Seventh Circuit because defendant had waived his right to appeal the issue when he did not object to the enhancement either in his written objections to the PSR or orally at the sentencing hearing.

Two levels were added to defendant's offense level because he was convicted under 18 U.S.C. § 1956. There was also a two level increase for obstruction of justice because of defendant's conduct in obtaining or attempting to obtain false letters concerning the nature of the victims' investments.

The Court denied any downward adjustment for acceptance of responsibility because the defendant's conduct in accepting responsibility was outweighed by his obstructive conduct and his violation of the pretrial release conditions. Based on this offense level of 32 and defendant's criminal history category of one, the advisory guideline imprisonment range is 121-151 months. The Court sentenced defendant to 146 months because the amount of loss of \$3,548,119.40 to the numerous victims who were defrauded. The Court recommended that defendant undergo a psychological or psychiatric evaluation during the term of confinement.

The imposition of the original sentence considered those suggestions presented both then and now by counsel: the seriousness of the offense, adequate deterrence to criminal conduct and protecting the public. Had the guidelines been advisory, this Court would have imposed the same sentence believing it to be

reasonable considering the defendant's criminal conduct, sufficient to hold defendant accountable and to protect the community from further criminality on his part.

Pursuant to 18 U.S.C. § 3553 the Court may consider the defendant's character and history. Defendant contends that the Court should consider his education, family support and depression. The Court does consider these factors but they are counterbalanced by defendant's criminal conduct involving innumerable fraudulent transactions over a significant period of time, the need to hold him accountable for his conduct and the need for an individual and general deterrent. Considering all these factors particularly the amount of loss, the numerous fraudulent transactions involved as well as the extensive period of time over which the criminal conduct continued, a sentence within the advisory guidelines is reasonable and necessary for the statutory purposes of sentencing.

For the reasons stated this Court advises the United States Court of Appeals for the Seventh Circuit that it would impose the defendant's original sentence had the sentencing guidelines been merely advisory.

Entered this 7th day of December, 2005.

BY THE COURT:

S/_____
JOHN C. SHABAZ
District Judge