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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF KENTUCKY  
CENTRAL DIVISION AT LEXINGTON

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UNITED STATES OF AMERICA,	:	Docket No. 20-63
	:	
Plaintiff,	:	Lexington, Kentucky
	:	Monday, August 21, 2023
	:	11:45 a.m.
v.	:	
	:	
DOUGLAS WILLIAM VANCE,	:	
	:	
Defendant.	:	

- - -

TRANSCRIPT OF SENTENCING HEARING  
BEFORE DANNY C. REEVES  
UNITED STATES DISTRICT COURT JUDGE

- - -

APPEARANCES:

For the United States:	JAMES T. CHAPMAN, ESQ. U.S. Attorney's Office 260 W. Vine Street Suite 300 Lexington, Kentucky 40507
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For the Defendant Douglas William Vance:	JEFFREY A. DARLING, ESQ. Nichols Walter PLLC 3120 Wall Street Suite 120 Lexington, Kentucky 40513
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Court Reporter:	LAUREN I. GOOTEE, RMR, CRR Official Court Reporter 101 Barr Street Lexington, Kentucky 40507 (859) 469-7459
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Proceedings recorded by mechanical stenography,  
transcript produced by computer.

1 (Proceedings commenced in open court at 11:45 a.m.)

2 THE COURT: We'll continue at this time in Lexington  
3 Criminal Action 20-63, United States versus Douglas William  
4 Vance, with the sentencing hearing.

5 Just before the recess, I did make findings with respect  
6 to certain objections that were raised to the guidelines in  
7 this particular matter and also advised the parties that I  
8 would provide a specific number with respect to loss amount  
9 that does affect the upper limit of the fine, which would be  
10 two times the amount of loss or gain in the case under the  
11 statute. I'll provide the parties with that specific  
12 information as I do review the presentence report with respect  
13 to each defendant. We'll proceed at this time with regard to  
14 Mr. Vance as indicated.

15 Before we proceed with the sentencing hearing, let me  
16 first confirm that Mr. Vance has had the opportunity to review  
17 his presentence report and to discuss it with Mr. Darling in  
18 the case.

19 Is that correct, Mr. Vance?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: And your presentence report will be filed  
22 in the record under seal pursuant to Rule 32 of the Federal  
23 Rules of Criminal Procedure. The report is available to the  
24 parties, but it's not available for the general public to  
25 review.

1 I believe I have resolved all objections to the  
2 presentence report affecting the guideline calculations in the  
3 case. If the parties are aware of other objections that do  
4 affect the guideline calculations, I'll call upon you in a  
5 moment to call those to my attention. But first I will adopt  
6 the findings that are contained in the report as well as the  
7 guideline calculations as I have addressed those previously.  
8 I'll also review those calculations with the parties here in  
9 just a moment.

10 I'll also remind the parties that while I've reviewed the  
11 materials filed in advance of the sentencing hearing that was  
12 previously scheduled for February and those additional  
13 materials that have been filed by the parties, if there are  
14 any other materials you'd like for me to consider, I'll  
15 certainly take those matters into account under Section 3553,  
16 and that would include, of course, arguments of the parties.

17 So turning to the presentence investigation report for  
18 the defendant. The guideline calculations contain two groups.  
19 The first group referred to as Count Group 1 in the  
20 presentence report consists of the counts of conviction for  
21 Count 1, which is the conspiracy to commit wire fraud, as well  
22 as Counts 2, 3, 4, and 5. Those are the individual counts of  
23 wire fraud in the case.

24 The second count group includes a seventh count, which is  
25 the conspiracy to commit money laundering. It's not grouped

1 together under the guidelines.

2 The base offense level for the first group is, we first  
3 look at level 7. There's a 16-level increase for the reasons  
4 that were previously outlined as the amount of loss in the  
5 case exceeding more than \$1.5 million but not more than \$3.5  
6 million. There's also a two-level increase because of my  
7 earlier finding that one of the victims in the case incurred  
8 substantial financial hardship -- and she's been identified as  
9 Ms. Faybik -- that would be subject to that enhancement. That  
10 creates an offense level of 27.

11 There's also a two-level increase because the defendant  
12 abused a position of public or private trust. In this case, I  
13 did find that there was abuse of private trust. And there's a  
14 two-level increase because the defendant willfully obstructed  
15 or impeded the administration of justice by testifying falsely  
16 during the trial in the case. The defendant has not raised an  
17 objection to that enhancement, so it's not necessary for the  
18 Court to make further specific findings about the nature of  
19 the false testimony presented during the case, but that  
20 results in an additional two-level increase for an adjusted  
21 offense level of 31.

22 The second count group for Count 7 carries over that base  
23 offense level from the first group. That's 27. Then there's  
24 a two-level increase based upon the conviction under 1956, the  
25 money laundering statute. Then there's the two-level increase

1 based upon abuse of trust as I previously found and for  
2 obstruction of justice. That results in an adjusted offense  
3 level of 33.

4 There's no adjustment for acceptance of responsibility in  
5 the case. The defendant has contested and continues to  
6 contest his criminal liability in this matter. So that  
7 results in a total offense level of 33.

8 Information regarding the defendant's criminal history is  
9 contained in the report. He has three criminal history  
10 points. That would place him in Criminal History Category II  
11 for purposes of calculating the nonbinding guideline range in  
12 the case.

13 Then turning to the statutory provisions as outlined in  
14 paragraph 87. The statute for Count 1 would provide a maximum  
15 term of incarceration of 20 years, for Counts 2 through 5,  
16 also a maximum of 20 years, as would Count 7. The guideline  
17 range based upon the total grouping that takes place in the  
18 case is a range of 151 to 188 months' incarceration.

19 The fine range -- and let me provide the parties with my  
20 calculations as to the upper level of the fine in the case.  
21 The Court has calculated the loss to victims in this matter is  
22 a total of \$2,736,136.58, and that's multiplied times two.  
23 It's two times the amount. And the upper limit of the fine in  
24 the case would then be \$5,472,273.16.

25 Now, the underlying calculation for that \$2.7 million

1 number is derived from adding the following amounts from the  
2 chart that was introduced by the United States as Exhibit 1  
3 during the hearing earlier today, but making adjustments for  
4 one victim, Ms. Faybik, and then reducing the total amount by  
5 the amounts that were actually paid to victims prior to the  
6 discovery of the fraud or the time in which the defendant  
7 reasonably would have known or the defendants would have known  
8 that they were subject to investigation for their fraudulent  
9 conduct.

10 So that would include the sum for Mr. Shumard of  
11 \$801,819; for Koch Minerals, \$605,000; Dragon Head  
12 Technologies, \$373,500; for GGC Funding, \$232,983.79; for  
13 Shannon Wells, \$50,000; for Creola Holdings, \$123,400; for  
14 Gary Chamblee, \$53,938.11; and for Joan Faybik, \$500,000.  
15 That brings us to a total of \$2,740,685.90.

16 And I've reduced that amount by \$4,100 that would have  
17 been paid to Ms. Faybik before either the fraud was discovered  
18 or the defendant reasonably would have known about the  
19 investigation, and the sum of \$449.32 to Mr. Shumard according  
20 to the testimony presented earlier today.

21 So that then results in the victim loss in the case,  
22 after adjustments, of \$2,736,136.58. And then it's multiplied  
23 by two to get the two times value for the upper limit of the  
24 fine in the case.

25 So the fine range is a range of the lower end, which is

1 based upon the total offense level. The lower end of the fine  
2 range would be \$35,000, and the upper end of the fine range  
3 would be \$5,472,273.16. Those are the guideline calculations  
4 that are adopted in this case.

5 Defendant proceeded to trial. I believe there are no  
6 motions that are currently pending to take up in the matter,  
7 no counts to be dismissed.

8 Let me confirm that there are no other motions or issues  
9 affecting the guideline calculations?

10 MR. CHAPMAN: That's correct, Your Honor.

11 THE COURT: Mr. Darling?

12 MR. DARLING: That's correct, Your Honor.

13 THE COURT: All right.

14 We'll then proceed with allocution in the case.

15 Mr. Darling, I'll hear from you initially and also then  
16 from Mr. Vance if he would like to address the Court.

17 MR. DARLING: Thank you, Your Honor.

18 The hardest allocution to do on behalf of a client is  
19 after a jury trial where he's convicted, because obviously --  
20 and the Court had mentioned -- Mr. Vance believed that he did  
21 not engage in fraud and he so testified at trial. So it's  
22 difficult to come in now and argue against it, particularly  
23 after the hearing that we had this morning.

24 I will limit myself to talking about the 3553(a) factors.  
25 Clearly it's a serious offense, it carries a serious penalty.

1 The guideline range is quite high. I understand where we got  
2 it.

3 The Court's job -- and you know this far better than I --  
4 is to impose a sentence that's sufficient but not greater than  
5 necessary to comply with the factors. Simply put, what should  
6 Doug Vance receive for committing the offenses he was  
7 convicted of as opposed to what someone else might receive for  
8 committing the same offenses?

9 We've got to look at Doug Vance. He's 54 years old,  
10 lives in Virginia. The Court will note that he has an  
11 incredibly supportive family. Everyone in the courtroom that  
12 is here sitting behind us came from Virginia. They all made  
13 the trip and made the effort to come, as they did when this  
14 case was originally set to be sentenced on February the 3rd.

15 Doug has been married to his wife Heather since 2007.  
16 And let me say that since the last sentencing hearing that  
17 didn't go, rarely a day goes by I don't hear from Heather in  
18 some form or fashion. I get an email, and basically she  
19 provides me information, you know, some of which -- most of  
20 which is no longer relevant to this case, but she just wants  
21 to help.

22 The rest of the family, they just want to help. They're  
23 here. They're going to be standing by Doug no matter how  
24 long he is incarcerated. I, frankly, have been surprised at  
25 the amount of family support that he has had. It's not always

1 like that with people that I represent.

2 Obviously we have submitted on behalf of Doug numerous  
3 letters of support, including from some people that were  
4 considered victims in the case. I'm not going to go  
5 through -- I'm done talking about Joan Faybik and what she has  
6 said.

7 But what's interesting in the case is, I know that there  
8 was a letter that I tried to get introduced from the  
9 co-defendant. The Court ruled it was inadmissible at trial,  
10 but it's a court exhibit and you have it. Clearly that --

11 THE COURT: This is the exhibit that, before you  
12 attempted to introduce it outside the presence of the jury, I  
13 was told that the co-defendant was not going to be testifying  
14 in the case?

15 MR. DARLING: I believe you're correct.

16 THE COURT: So then the case proceeded, both  
17 defendants testified in the case, and Mr. Vance tried to place  
18 the blame on Ms. McKinnon, Ms. McKinnon tried to place the  
19 blame on Mr. Chamblee in the case, and so that was kind of the  
20 defendants' approach at trial?

21 MR. DARLING: I think it ended up that way, but I  
22 will certainly represent to the Court, that was not something  
23 that was conjured up between Ms. Lewis and I in representing  
24 him. I didn't know she was going to testify -- I thought she  
25 wasn't going to testify until --

1 THE COURT: That's what she represented with regard  
2 to trying to introduce the exhibit.

3 MR. DARLING: Right.

4 THE COURT: So she was not going to be testifying in  
5 the case, an out-of-court statement, but then the same  
6 arguments were made that basically she -- well, she never  
7 admitted to a lot of the fraud, but she blamed everybody else  
8 for everything that happened in the case.

9 MR. DARLING: And accepted some of the blame for some  
10 of the things that the government said that Mr. Vance did,  
11 like falsifying bank records. That came from his email. You  
12 know, she admitted that she was using his email, username, and  
13 password without his knowledge to send these bank records.

14 Obviously there's no claim here with regard for minor  
15 role or anything like that. But, frankly, as I've said, from  
16 dealing with Mr. Vance, I firmly believe that this was his  
17 business and he was trying, and it wasn't working and then he  
18 got up with Ms. McKinnon who started bringing investors in,  
19 and things snowballed from there.

20 So I'm not saying this is all Ms. McKinnon's fault and  
21 I'm not trying to absolve Mr. Vance of any blame. But I think  
22 in looking at this, I think he does -- in looking at the  
23 3553(a) factors, what the Court has to do is determine what  
24 sentence is appropriate in this case.

25 Now, the guideline range is quite high. I mean, we're

1 basically talking about 12 and a half to 15 years or so. And  
2 the question that the Court has to answer is, is that  
3 necessary to satisfy 3553(a), or can 3553(a) be accomplished  
4 without sentencing him to that serious of time? There's still  
5 a very significant sentence that the Court could assess to  
6 Mr. Vance that would satisfy both in terms of deterrence, both  
7 in terms of the seriousness. I think nothing is going to help  
8 anybody get any money back.

9 But particularly when you look at the fact that the one  
10 thing that has never come up in this case is did Mr. Vance get  
11 a bunch of money out of this, because he didn't. Any money he  
12 got from investors he was pumping back into the business  
13 trying to get it to work. There's very little evidence that  
14 he got any money, and, I mean, Agent Hubbuch looked for it.

15 THE COURT: Well, I know you draw a fine line in  
16 investors versus those that he's borrowing money from, but  
17 there's also testimony in the case he was paying off that  
18 judgment over in Virginia with some of these monies directly.

19 MR. DARLING: Agreed.

20 THE COURT: Monies were coming in and he was not  
21 using that for business purposes but to absolve himself of  
22 that additional criminal liability in that case.

23 MR. DARLING: Agreed. And there certainly was a  
24 certain amount of desperation there with him taking care of  
25 that to keep himself out of jail, and I understand that.

1 But given the fact that the Court has assessed a loss  
2 amount of \$2.7 million, you know, correlating that to what  
3 Mr. Vance got in this case, I mean, he certainly -- I think  
4 that was \$70,000, and I'm sure there's more money, but  
5 certainly not a big chunk of money.

6 Your Honor, you've got to decide what to do in this case.  
7 I know all of the enhancement objections were overruled, and I  
8 understand the Court's ruling. But 3553(a) given to somebody  
9 who's 54 years old, not in good health. He has various issues  
10 that he deals with, COPD, high blood pressure, medications.  
11 Being in the Clark County jail has been very difficult for  
12 him.

13 He needs to get to somewhere with a sufficient amount of  
14 time so that he can take advantage of things that he may get  
15 involved in within the prison system, and he wants to do that.  
16 He needs to get back to his family just because his family  
17 loves him, his family wants him home. Hopefully he can make  
18 something of his life without further resulting in any  
19 criminal activity.

20 I'm asking the Court to vary downward slightly to 120  
21 months. I think that would satisfy all of the factors of  
22 3553(a). It's below the guidelines. It would be maybe two  
23 and a half years below the guidelines, but it's still a big  
24 number. It's still a significant number. It's certainly a  
25 number that anyone who looked at this case would say, Judge

1 Reeves did not treat him in a lenient fashion by giving him  
2 120 months. I think that would be a fair sentence.

3 THE COURT: What is 120 months now under the BOP  
4 calculation when a person receives a lot of programming? We  
5 used to think that a person sentenced in federal court was  
6 going to have to serve about 85 percent of their sentence,  
7 unless they were enrolled in the RDAP program, you could get a  
8 year off. But now, following the First Step Act of 2018,  
9 essentially every program that's administered through the BOP  
10 has some credit that's given, and then that calculation is no  
11 longer the same. 85 percent is no longer 85 percent. So 120  
12 months is not 120 months.

13 Have you looked at that at all?

14 MR. DARLING: Judge, I'll be honest with you. I get  
15 asked that question by clients, usually clients that have  
16 already been sentenced and gone, and I tell them it's not  
17 something I deal with. I mean, I don't -- I probably don't  
18 keep up with that as much as I should.

19 THE COURT: Well, certainly. But you're certainly  
20 aware that there's a different calculation that's now  
21 performed. I know the U.S. always sends out these  
22 notifications after significant cases and they talk about the  
23 sentences that have been imposed and the person will serve 85  
24 percent, but that's not true.

25 MR. DARLING: But, you know, Judge, whenever

1 something comes up in a guideline situation where we talk  
2 about, well, it was this amount or he did this, the answer is  
3 usually, well, that's taken care of in the guidelines. That's  
4 something that is taken into consideration in the guidelines.

5 THE COURT: Right.

6 MR. DARLING: Well, this is the same situation. I  
7 mean, congress passes the guidelines and --

8 THE COURT: No, they approve the guidelines. They  
9 don't object to the guidelines and then they go into effect  
10 November 1st if there's no objection from congress, right?

11 MR. DARLING: And I know you'd know that.

12 THE COURT: That's what I've heard.

13 MR. DARLING: You know, but if the federal government  
14 has decided that a person who gets 120 months but avails  
15 themselves of certain programs and if they do certain things  
16 that they should get credit, well, then they should get credit  
17 because that's what the government says.

18 THE COURT: That's an executive branch function,  
19 that's not a judicial function.

20 MR. DARLING: Correct.

21 THE COURT: Well, let me ask you one other question.  
22 And I want to draw a parallel between this case and another  
23 case that I had. The other case came up recently in the  
24 supervised release context, but let me go back to the original  
25 case.

1 Pikeville case, two defendants, Johnson and Damron.  
2 Johnson comes up with a plan to burn a railroad tunnel because  
3 he wants CSX to have to use his property as access around the  
4 tunnel and they'll pay him some money for the access. He gets  
5 his buddy Damron to soak the timbers in oil over the course of  
6 several days in exchange for paying Damron \$1,000. Damron  
7 does it, he soaks the timbers, he sets the fire, burns the  
8 tunnel. The railroad pays a whopping \$3,000 for access to  
9 Johnson around the property with Damron getting his \$1,000 for  
10 destroying the tunnel, someone else's property, and it cost  
11 the railroad \$7.9 million to do the repairs. Now, Mr. Damron  
12 just got \$1,000 out of the deal.

13 That's kind of like your argument that Mr. Vance, he  
14 didn't really get a lot out of this scheme, but there are a  
15 lot of individuals that lost a lot of money, you know,  
16 regardless of whether we consider companies like Kentucky  
17 River Properties. You can make the argument, oh, it's a big  
18 company, lots of land holdings in eastern Kentucky, they're  
19 not going to miss the money. But the point is, it's not  
20 Mr. Vance's money that's the subject of the fraud.

21 MR. DARLING: I understand.

22 THE COURT: A lot of money was lost in this  
23 particular case based upon Mr. Vance's scheme that he  
24 concocted and he carried out with Ms. McKinnon. Reasonably  
25 foreseeable that the actions that she was taking were

1 foreseeable to him. It's not believable and the jury rejected  
2 the argument that they're both victims of Chamblee, that  
3 somehow he had something to gain from telling Ms. McKinnon to  
4 conduct all this fraudulent activity, to cheat his -- I  
5 suppose it wouldn't be coworkers, but his boss, I guess, at  
6 the time and all these other people that were investing in the  
7 company.

8 The jury rejected that. The jury clearly found that both  
9 defendants were liable in a very extensive fraud scheme that  
10 cost a lot of people a lot of money. But your argument is,  
11 well, but he didn't get a lot from it.

12 So how do those two cases -- how are they comparable and  
13 how are they not comparable?

14 MR. DARLING: I don't think they're comparable at  
15 all, frankly. It sounds like the initial thought that  
16 Mr. Johnson had was, this is what I'm going to do, and it was  
17 never anything that was like, I'm going to try to do something  
18 right and then do something wrong. I mean, this was obviously  
19 a premeditated horrible act. And I'm assuming that Mr. Damron  
20 knew when he was soaking the timbers what the purpose was.

21 So I think the fact that they got very little money  
22 comparatively but CSX had to pay 7 or 8 million dollars, I  
23 just don't see that as being comparable to -- again, as I  
24 firmly believe, Mr. Vance was trying to get the business  
25 going, it didn't, it got out of hand, he started borrowing

1 from Peter to pay Paul. I just think it's different.

2 You know, these fraud Ponzi schemes, I mean, obviously I  
3 don't -- like some people, I read about the big ones in the  
4 news and that, and I guess Bernie Madoff is the biggest. But  
5 the one thing we know about Bernie Madoff and Michael Milken,  
6 you know, before they got caught, I mean, they had millions  
7 and millions of dollars when they got caught. They were  
8 making money at this. It was far more sophisticated than  
9 this. But I appreciate the question.

10 THE COURT: Well, and the footnote is, Mr. Damron is  
11 also paying off that judgment at \$50 a month and was wondering  
12 how long it was going to take him to pay the full amount if he  
13 didn't have to pay interest.

14 MR. DARLING: Probably about as long as it will take  
15 Mr. Vance to pay off his even though it's significantly less,  
16 at 50 a month or whatever.

17 THE COURT: Yes, sir. All right. Thank you.

18 Mr. Vance, would you like to add anything to what  
19 Mr. Darling has said on your behalf?

20 THE DEFENDANT: I would just like to say thank you to  
21 my family for supporting me. I apologize to the Court. I  
22 apologize to anybody that feels like I wronged them. Given an  
23 opportunity, I will make good. Thank you.

24 THE COURT: All right. Thank you.

25 Mr. Chapman.

1 MR. CHAPMAN: Thank you, Your Honor.

2 I'll walk through the 3553(a) factors from the United  
3 States' point of view.

4 First, the nature and circumstances of the offense are  
5 aggravating in this particular case. As the Court's noted,  
6 this case involved an extremely serious and harmful series of  
7 wire fraud and money laundering offenses resulting in a loss  
8 of over \$2.7 million, as the Court's determined today.

9 The Court is obviously intimately aware of the facts  
10 having conducted the trial, and the PSR sets them out. The  
11 defendant, acting in concert with Molly McKinnon, defrauded  
12 numerous investors and lenders through the use of false  
13 banking and financial documents, false production information,  
14 false sales information, false customer lists, and the like.

15 He secretly set up two competing sets of investors,  
16 Deware and the Shumard Group, who were each unaware that the  
17 other was an investor. He duped them all out of a substantial  
18 amount of money. He defrauded several other lenders and  
19 investors as well as the trial and as Agent Hubbuch's  
20 testimony has detailed.

21 False documents really purveyed this case. The false  
22 financial document that caused April Francis and Allan Deware  
23 to discover the fraud, fraudulent new course spreadsheets, the  
24 false financial documents sent to KRP, the fraudulent  
25 Washington Mills purchase order. This case is just replete

1 with falsehoods and deceptions and concealments to induce  
2 lenders and investors to part with their money and give it to  
3 Doug Vance. And then when he had their money, the Court saw  
4 what he did with it.

5 Now, he passed some of it back to investors -- that's the  
6 Ponzi-like part of this scheme -- because he was trying to  
7 convince them that their investment was profitable and induce  
8 more investment, but he also used a large portion on personal  
9 spending. He paid off prior restitution judgments, he bought  
10 his wife jewelry, and he simply transferred a large amount of  
11 money to his personal bank account. And obviously, the Court  
12 will remember, there are large amounts of unaccounted for cash  
13 withdrawals.

14 On the history and characteristics of the defendant, his  
15 history and characteristics are, respectfully, overwhelmingly  
16 negative. He's been committing crime for over a decade, back  
17 to 2011 when he began a pattern of fraud by writing a bad  
18 check. In 2013, he was convicted of fraud in Tazewell,  
19 Virginia, and he was on probation for that offense when he  
20 committed the crimes at issue in this case. Indeed, the  
21 restitution from that offense is one of the reasons he came  
22 here to Eastern Kentucky and set up a fraudulent business.

23 He dropped out of school in the eighth grade, but, to his  
24 credit, he has earned his GED. And the PSR lists several  
25 family members, which have already been alluded to this

1 morning. The Court's obviously aware, several of those family  
2 members wrote letters on his behalf, and I'd like to comment  
3 on those letters briefly.

4 I think the letters as a whole really show the Court what  
5 a deceitful and two-faced man Doug Vance is. One theme  
6 running through them is that some people remain convinced that  
7 Mr. Vance was honest in his business dealings. Alan Rolfes,  
8 for instance, said that. Mr. Vance somehow even got his  
9 Virginia probation officer to write a somewhat positive letter  
10 even though he literally committed these crimes while he was  
11 on probation.

12 Rick Love thinks Mr. Vance is one of the most honest  
13 people he's ever met. Stephanie Love thinks he's one of the  
14 most honest and trustworthy people. The Loves obviously do  
15 not know Mr. Vance very well at all.

16 Another theme in the letters is that the letter writers  
17 vastly downplay Mr. Vance's criminality. Heather Vance does  
18 this. Jimmy Wedge also does it. He wrote, "Sometimes his  
19 associates can lead him in uncharted waters." Total  
20 abdication of personal responsibility.

21 Another theme is protestations of his innocence. Heather  
22 Vance writes that he has never and would never hurt or mislead  
23 anyone. Suffice it to say, Your Honor, that Heather Vance did  
24 not see the trial in this case.

25 Michael Traylor, for example, calls these charges

1 outrageous and says that Mr. Vance is not capable of these  
2 crimes. Again, Mr. Traylor has obviously not seen the  
3 evidence in the case.

4 Pamela Bailey writes that Vance has never been in any  
5 serious trouble with the authorities. Obviously, Ms. Bailey  
6 doesn't know her cousin at all. He has a prior felony even  
7 apart from this case and he's now been convicted of six  
8 federal felonies.

9 A final theme in the letters is that nothing is more  
10 important to Mr. Vance than his family. Well, evidently his  
11 family and the people who said this don't know him very well,  
12 because if family was the most important thing to Mr. Vance,  
13 he would be sitting at home with them today, not sitting here  
14 in court being sentenced for wire fraud and money laundering.  
15 According to his actions, defrauding people is more important  
16 to Mr. Vance than his family.

17 Finally, the evidence shows that Mr. Vance is a serial  
18 liar. He, of course, testified falsely under oath to the jury  
19 and the Court in this case, mirroring the fraud he committed  
20 in Virginia and the lies he told to this Court earlier in the  
21 case, that bond violation we went through, and the lies that  
22 he told to so many other investors and lenders in this case.

23 He lied to the Tazewell County Circuit Court; he lied to  
24 Agent Hubbuch; he lied to Allan Deware; he lied to the Shumard  
25 Group; he lied to Koch; he lied to KRP. And, of course,

1 Mr. Vance has never accepted responsibility for his  
2 wrongdoing.

3 Considering all the circumstances of this case, the  
4 United States believes that with very limited exception, the  
5 aggravating parts of this case have been adequately captured  
6 by the guideline range in the Court's rulings this morning.  
7 That range, of course, is 151 to 188.

8 The exceptions are, the Court obviously made a  
9 determination that there are nine victims. That does not, of  
10 course, qualify for the ten or more victim enhancement. But a  
11 crime with nine victims, all else being equal, is, of course,  
12 more serious than a crime with one victim. The fact that  
13 there are nine victims in this case, that's not accounted for  
14 in the guideline range.

15 Another aggravating factor that's not accounted for is  
16 the sheer amount of the loss. The loss could have been cut  
17 almost in half and the range would be the same. You could cut  
18 1.2 million off of the loss and the range wouldn't change.

19 So we don't think those parts are adequately captured in  
20 the guideline range, so we do not believe a sentence at the  
21 low end of that range would be appropriate. But, to be  
22 candid, given the amount of aggravating factors it does take  
23 into consideration, we don't think it's necessary to go to the  
24 upper end either. We think a slightly above midlevel  
25 guideline sentence is appropriate. Specifically, we would

1 advocate for 174 months. That accounts for the aggravating  
2 facts that are not accounted for in the range and would be the  
3 appropriate outcome as to Mr. Vance.

4 A guideline sentence will reflect the seriousness of the  
5 offense, promote respect for the law, and provide just  
6 punishment. A guideline sentence would also deter Mr. Vance  
7 from future criminality, something he is obviously in need of.  
8 There's simply no indication that this fraud would have ever  
9 stopped if not for this case. It would also deter other  
10 individuals in society who may be contemplating coming into  
11 Eastern Kentucky and setting up a business tainted at root  
12 with fraud.

13 A guideline sentence will additionally protect the public  
14 from further crimes of Mr. Vance. His history shows that the  
15 public certainly needs protection from him. He's defrauded  
16 too many people too many times for that not to be obvious.

17 And, Your Honor, I would also at this point ask the Court  
18 to impose restitution and money judgment amounts as well that  
19 are consistent with the Court's loss amount finding, of course  
20 on restitution subtracting out all the returns listed in  
21 Exhibit 1 since those have been returned.

22 And Ms. Faybik has specifically instructed me to not seek  
23 restitution on her behalf. I told her I would pass that on to  
24 the Court.

25 THE COURT: All right.

1 MR. CHAPMAN: I also have information concerning how  
2 the restitution to Mr. Shumard's estate should be listed, if  
3 you would like me to go over that in open court, Your Honor.

4 THE COURT: Yes, sir.

5 MR. CHAPMAN: Okay. As Agent Hubbuch testified,  
6 unfortunately, between the trial and now, Mr. Shumard has  
7 passed away. The amount of restitution in the judgment should  
8 be listed under the Estate of Ken Shumard. And the executors  
9 names are Julie Shumard Potts, Kenneth Marshal Shumard, Jr.,  
10 and Robert Baxter Shumard. And the address for the estate --  
11 I believe this is the general Shumard address. It's 145  
12 Technology Parkway, NW, Suite 200, Peachtree Corners, Georgia  
13 30092.

14 THE COURT: All right.

15 MR. CHAPMAN: Thank you.

16 THE COURT: Thank you.

17 Mr. Deware has submitted a declaration of victim losses.  
18 I believe he submitted two actually. The first declaration of  
19 loss was in the amount of \$527,213.54, and then the more  
20 recent declaration of loss that I received through the  
21 probation office was \$444,110.17, which includes the sum of  
22 the victim loss that we discussed earlier, \$373,500, plus  
23 attorney fees, related attorney fees.

24 I know that counsel for Ms. McKinnon had objected to the  
25 attorney fee issues as not having sufficient information, and

1 I believe that's been provided through the affidavit of  
2 attorney fees and costs that's attached to the declaration  
3 outlining the amount of \$70,610.17.

4 What is the government's position with regard to the  
5 claim for attorney fees by Mr. Deware?

6 MR. CHAPMAN: Thank you for bringing that up,  
7 Your Honor.

8 The government's position is that they should be awarded.  
9 He would ask the Court to base its restitution figures on  
10 Mr. Deware's most recent victim impact statement, the one  
11 totaling \$444,110.17. We do believe the attorney fee as set  
12 out in the victim impact statement and in the affidavit is  
13 properly included in restitution under 3663(a), subsection  
14 (b)(4).

15 THE COURT: All right. Thank you.

16 Mr. Darling, would you like to briefly address the  
17 restitution issue?

18 MR. DARLING: I think everything that Mr. Chapman  
19 said with regard to restitution is appropriate. You've come  
20 up with the numbers. Given the convictions, I don't think  
21 there are any reasonable objections I can raise.

22 THE COURT: All right.

23 Let me first address the issue of restitution.

24 I don't see a need to further continue the hearing, which  
25 the Court may do for a period of 90 days to allow statements

1 of restitution or information to be provided. I do find that  
2 restitution is appropriate under the Victim Restitution Act.  
3 My calculation will include the following numbers with certain  
4 reductions that will be shown. That's why this is different  
5 than a victim loss amount because the returns are proper for  
6 issues of restitution. And this is based upon information  
7 submitted as well as information provided by the United States  
8 in the course of the hearing held today.

9 Mr. Shumard, the amount is \$801,819, and that will be to  
10 the estate with the executors included in the judgment, with  
11 payments to be made to the address that has been provided by  
12 the United States and will be set forth in the judgment.

13 Now, from that amount, it will be reduced the sum that  
14 was referenced earlier, \$449.32. That was based upon  
15 testimony presented --

16 I'm sorry. Mr. Chapman?

17 MR. CHAPMAN: Your Honor, for purposes of  
18 restitution, I actually think the full amount returned to  
19 Mr. Shumard should be --

20 THE COURT: I'm sorry. Does that include the \$449?

21 MR. CHAPMAN: It does.

22 THE COURT: All right. I'm sorry.

23 I'll start over, then.

24 Mr. Shumard, \$801,819. That will be reduced by  
25 \$48,782.69. Koch Minerals, \$605,000. Dragon Head

1 Technologies will be the sum reflected in the most recent  
2 declaration of loss, which is \$444,110.17, which does include  
3 the attorney fee amount incurred in connection with the  
4 fraudulent activities in the case and Mr. Deware and his  
5 company's attempt to respond to it. No reduction shown from  
6 that amount.

7 Kentucky River Properties also has indicated through its  
8 statements, including a letter to the Court, that it's not  
9 seeking restitution in the case, and the Court previously  
10 found it not to be a victim.

11 GGC Funding, \$232,983.79. That will be reduced by  
12 \$15,043.99. Shannon Wells, \$50,000; Creola Holdings,  
13 \$123,400; Gary Chamblee individually, \$53,938.11.

14 Joan Faybik is specifically not requesting restitution.  
15 And while the Court found that she was a victim that had  
16 incurred substantial loss, the issue of restitution will not  
17 be addressed with respect to her and she will not receive  
18 restitution under the judgment to be entered in the case.

19 Those are the amounts of restitution that will be  
20 included.

21 Now, turning to the judgment to be entered in this case.  
22 The Court, of course, does consider the guidelines as a  
23 starting point for the analysis of an appropriate sentence,  
24 and, of course, an important part of the sentence is the  
25 period of incarceration. In this case, the parties have

1 addressed the nature and the circumstances of the offense as  
2 well as the history and the characteristics of the defendant.

3 Of course, I did sit through the trial in the case, and I  
4 think I took probably 500 pages of notes in the course of this  
5 trial, and I reviewed all those notes over the weekend. So  
6 I'm certainly familiar with testimony offered with respect to  
7 both defendants in the case.

8 It may be that this defendant had good intentions  
9 initially. I don't know that I can draw that conclusion. But  
10 it's also clear to the Court that shortly after he may have  
11 had those intentions, before moving to Kentucky, that things  
12 went bad quickly and he participated in the fraudulent  
13 conduct.

14 And I also agree with the United States, with  
15 Mr. Chapman, that he's continued in his efforts to provide  
16 false information to others to either limit his liability, his  
17 criminal liability in this particular case, or perhaps to give  
18 others the impression that he did not engage in fraud.

19 Specifically, I'm referring to Ms. Faybik, an older  
20 individual that has lots to lose in the case. And it does  
21 appear to me based on all information presented, and I do  
22 conclude that Mr. Vance certainly did take advantage of her.  
23 So to characterize him as a person that would never engage in  
24 this type of conduct is just incorrect. He did and he did so  
25 in concert with Ms. McKinnon in the case.

1           Of course, that's just one factor the Court considers  
2 under 3553. I also consider the history and characteristics.  
3 That would include criminal history, and there is some  
4 criminal history in this particular case, and it's somewhat  
5 similar in nature to the charges and the conviction of the  
6 defendant in this matter.

7           So it does not appear that he really has reformed his  
8 conduct, and he's really never accepted responsibility for his  
9 criminal actions in this case. There have been some attempts  
10 to blame other individuals or perhaps to close your eyes or to  
11 look the other way, but it's clear to the Court that this  
12 defendant knowingly engaged in this fraudulent activity,  
13 committed wire fraud, money laundering as well.

14           There's a significant and substantial amount of evidence  
15 supporting all the counts of conviction in this particular  
16 case, which I do consider to be very serious in nature even  
17 though the defendant may not have profited or the United  
18 States has not been able to prove a substantial profit to this  
19 defendant based upon the manner in which he disposed of the  
20 monies received either through investors or through loans in  
21 the course of this matter.

22           The defendant, through the bond violation earlier, has  
23 not shown respect for the law. The Court believes that it is  
24 necessary to impose a sentence within the guideline range to  
25 meet these factors of 3553, which would constitute just

1 punishment.

2 I do agree with the United States that when the Court  
3 begins the analysis from the guideline range, and generally  
4 the middle of the range, there are a number of aggravating  
5 factors that have been outlined here, those I've mentioned as  
6 well as those Mr. Chapman has mentioned as well, that do cause  
7 me to go slightly above the middle of the range, and I do  
8 concur that a sentence of 174 months, slightly above the  
9 middle of the range, is appropriate in this particular case.

10 I believe it would provide sufficient deterrence both for  
11 this defendant as well as for others that might be inclined to  
12 engage in similar conduct, and it would provide a measure of  
13 protection to the public during the period of incarceration  
14 that the defendant will serve.

15 I do have serious reservations about whether the  
16 defendant will attempt to reengage in similar conduct  
17 following his release from a period of incarceration, but I  
18 believe that with a period of supervised release and  
19 conditions of supervision that that will mitigate the risk  
20 that may be otherwise presented to the public.

21 Of course, I consider the other factors of 3553,  
22 including the need to avoid unwarranted sentencing disparities  
23 among defendants with similar records who have been found  
24 guilty of similar conduct. And in this particular case, based  
25 upon the serious nature of the conduct, I believe that to go

1 below the guideline range would be an unwarranted disparity,  
2 notwithstanding the fact that this defendant does have a  
3 limited criminal history, three points, Criminal History  
4 Category II.

5 But taking all those factors into account, I do agree  
6 with the United States in this case with its recommendation  
7 with respect to the sentence of incarceration. That together  
8 with three years of supervision, I believe, will provide  
9 sufficient protection to the public going forward. So I will  
10 announce the sentence.

11 It will be the sentence of the Court, pursuant to the  
12 Sentencing Reform Act of 1984, as modified by the decisions in  
13 *Booker and Fanfan*, I do believe the following sentence would  
14 be sufficient but not greater than necessary to meet all of  
15 the factors of Title 18, Section 3553. Therefore, it will be  
16 the judgment of the Court that the defendant, Douglas William  
17 Vance, will be committed to the custody of the Bureau of  
18 Prisons for a term of 174 months on each of Counts 1, 2, 3, 4,  
19 5, and 7 to run concurrently with each other to produce a  
20 total term of 174 months.

21 I will recommend to the Bureau of Prisons that during the  
22 period of incarceration that Mr. Vance participate in  
23 available job skills and vocational training programs. And  
24 upon release, he'll be placed upon supervision for three years  
25 on each of the counts of conviction, 1, 2, 3, 4, 5, and 7,

1 with those terms to run concurrently. That's a total of three  
2 years of supervised release. And within 72 hours of release  
3 from the custody of the Bureau of Prisons, he is required to  
4 report in person to the probation office in the district in  
5 which he is released.

6 While on supervision, he may not commit another federal,  
7 state, or local crime. He must comply with the mandatory as  
8 well as the standard conditions that have been adopted by the  
9 Court and that will be set forth in the judgment and  
10 commitment order.

11 I'll also include the following special conditions:

12 First is that he must provide the probation office with  
13 access to any requested financial information.

14 He may not have any contact with any individuals  
15 identified as victims in the case.

16 He is required to submit his person as well as any  
17 offices, properties, homes, residences, vehicles, storage  
18 units, papers, or computers, as well as any other electronic  
19 communications or cloud storage locations, data storage  
20 locations, or any media to a search conducted by the probation  
21 office. The failure to submit to a search would be grounds  
22 for revocation of supervision. And he is required to warn any  
23 other occupants that his premises would be subject to a search  
24 according to this condition.

25 The Court has made a determination as to restitution in

1 the case. That will be included in the judgment. That amount  
2 of restitution will be due and owing, and any outstanding  
3 balance that the defendant is unable to pay must be paid in  
4 accordance with the Federal Bureau of Prisons Inmate Financial  
5 Responsibility Program. And any balance that would be owed  
6 would be established to be paid in accordance with an  
7 installment payment schedule to be set by subsequent orders of  
8 the Court.

9 Now, based upon the amount of restitution that will be  
10 owed in the case as well as the defendant's current financial  
11 position and situation, I will waive the fine requirement in  
12 the case. Under 5E1.2, I do determine that based upon the  
13 terms of the sentence to be imposed, which would include the  
14 period of incarceration and amount of restitution, that under  
15 that section of the guidelines the Court may waive the fine  
16 and will do so in this case.

17 However, the defendant will be required to pay the  
18 special assessment of \$100 for each count of conviction,  
19 that's a total of \$600, and will be required to forfeit any  
20 property, real or personal, that's involved in the offenses,  
21 including any property traceable to such property or any  
22 property that constitutes or is derived from proceeds  
23 traceable directly or indirectly to the commission of the  
24 offenses. And that includes but is not limited to any money  
25 proceeds obtained as a result of the commission of the

1 offenses of conviction. And any and all interest the  
2 defendant may have in property will be vested to the United  
3 States and forfeited to the United States.

4 And then the defendant will be remanded back to the  
5 custody of the United States Marshal pending designation for  
6 service of his sentence in the case.

7 That will be the judgment to be entered in this matter.

8 I'll ask the clerk in just a moment to advise Mr. Vance  
9 of his appellate rights, and that would be with respect to the  
10 conviction as well as the sentence that has been announced in  
11 the case.

12 Before I do that, I'll ask counsel to state any  
13 additional objections that they may have, first to the  
14 judgment that has been announced. That would include  
15 conditions of supervision. Second would be any objections  
16 under *United States versus Bostic*. Under that decision from  
17 the Sixth Circuit, any objections not previously raised should  
18 be raised at this time so that they may be addressed by the  
19 Court to be properly preserved for review on appeal.

20 Finally, if either party would like the Court to make  
21 additional findings with respect to the sentence that has been  
22 announced, I'll be happy to make such additional findings if  
23 requested.

24 Mr. Chapman, I'll begin with you on behalf of the United  
25 States with respect to objections or request for findings.

1 MR. CHAPMAN: Your Honor, I have one clarification to  
2 address with the Court, and that is one of the very last items  
3 the Court went over, which is the forfeiture in the case. The  
4 Court did reference forfeiture of the money proceeds obtained  
5 as a result of the case.

6 THE COURT: Yes, sir.

7 MR. CHAPMAN: I simply wanted to confirm that that  
8 specific amount would be listed in the judgment as a money  
9 judgment, the 2.7 -- the two-seven-forty.

10 THE COURT: Yes, sir. \$2.736,136.58 is the amount.

11 MR. CHAPMAN: Yes, sir. And nothing additional.  
12 Thank you.

13 THE COURT: Yes, sir.

14 And Mr. Darling.

15 MR. DARLING: Your Honor, we have no legal objections  
16 to the judgment as imposed, I have no additional *Bostic*  
17 objections, and we do not require any further findings.

18 THE COURT: Thank you.

19 Madam Clerk, if you would please advise Mr. Vance of his  
20 appellate rights.

21 THE CLERK: Yes, Your Honor.

22 (The form entitled "Court's Advice of Right to Appeal"  
23 was read aloud in open court by the clerk.)

24 THE COURT: Thank you. Mr. Darling, if you wouldn't  
25 mind to retrieve that acknowledgment of rights. There should

1 be two copies. I'll ask you to review those rights of appeal  
2 with Mr. Vance. And after he's assured himself that he  
3 understands those rights, I'd ask that he sign that original  
4 document. And there's a copy he can keep for his records.

5 All right. Thank you.

6 Let me see if there are any additional matters we need to  
7 take up before we take about a ten-minute break, and then the  
8 sentencing proceeding for Ms. McKinnon will be called at that  
9 time.

10 MR. CHAPMAN: Not from the United States, Your Honor.

11 THE COURT: Mr. Darling.

12 MR. DARLING: Only, Your Honor, insofar as I have  
13 assured Mr. Vance that I'll file a notice of appeal on his  
14 behalf, but I will then, probably contemporaneously, move to  
15 withdraw. He has indicated he's going to hire counsel to do  
16 his appeal.

17 THE COURT: All right. You would certainly be  
18 continued in the case until such time as the notice of appeal  
19 would be filed on his behalf.

20 MR. DARLING: Thank you, Your Honor.

21 THE COURT: All right. Thank you.

22 We'll take a ten-minute recess, and then the sentencing  
23 hearing for Ms. McKinnon will be called.

24 (Proceedings adjourned at 12:42 p.m.)

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C E R T I F I C A T E

I, LAUREN I. GOOTEE, RMR, CRR, certify that the foregoing is a correct transcript from the record of proceedings in the above-entitled case.

/s/ Lauren I. Gootee  
LAUREN I. GOOTEE, RMR, CRR  
Official Court Reporter

October 9, 2023  
Date of Certification