

USA

1998R00899
Buvinger

(Rev. 03/05)

United States District Court
Northern District of Illinois

UNITED STATES OF AMERICA)
)
 v.)
)
 James M. Duff)

Case Number: 03-CR-922-1
Judge: Elaine E. Bucklo

Terrence H. Campbell, Defendant's Attorney
Charles E. Ex, AUSA

JUDGMENT IN A CRIMINAL CASE
(For Offenses Committed On or After November 1, 1987)

THE DEFENDANT ENTERED A PLEA OF:

guilty to Count(s) 1 - 33 of the Second Superseding Indictment, which was accepted by the court.



THE DEFENDANT IS CONVICTED OF THE OFFENSES(S) OF:

<u>Title & Section</u>	<u>Description of Offense</u>	<u>Date Offense Concluded</u>	<u>Count Number(s)</u>
18 U.S.C. § 1962 (d)	Conspiracy to commit racketeering and corrupt organizations	June 2002	one
18 U.S.C. § 1341 and 2	Scheme to commit Mail Fraud	June 2002	2 - 17, 19, 21 and 22
18 U.S.C. § 1343 and 2	Scheme to commit Wire Fraud	December 2001	18, 20 and 23
18 U.S.C. § 1956 (h)	Scheme to commit Money Laundering	June 2002	24
18 U.S.C. § 1956 (a) (1)(B)(i) and 2	Laundering of Monetary Instruments	9/16/1999	25 - 30
26 U.S.C. § 7206 (1)	False statement on an Income Tax Return	8/28/1998	31

26 U.S.C. § 7206
(2)

Assist in the preparation of a False Income Tax
Return

8/25/2000

32 - 33

The defendant is sentenced as provided in the following pages of this judgment.

IMPRISONMENT

IT IS THE JUDGMENT OF THIS COURT THAT:

the defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total uninterrupted term of **118 months**.

As to Count 1, 24 -30, the defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total uninterrupted term of **118 months**. As to Count 2-23, the defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total uninterrupted term of **60 months**. As to Count 31-33, the defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total uninterrupted term of **36 months** and all such terms to run concurrent to each other.

The Court recommends to the Bureau of Prisons:

That the defendant be allowed to serve his sentence at either Oxford or Yankton.

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for the periods specified for each count of conviction.

The defendant is sentenced on all count(s) of conviction, namely, Count(s) 1 - 33 to a period of 3 years of Supervised Release, said periods to run concurrent to each other.

The defendant is sentenced on all count(s) of conviction to Supervised Release, said periods to run concurrent as follows:

Count	1-30	a period of	3 year(s) Supervised Release.
Count	31-33	a period of	1 year(s) Supervised Release.

The defendant shall report to the probation office in the district to which the defendant is released within seventy-two hours of release from the custody of the Bureau of Prisons. In addition, see the attached page(s) defining the mandatory, standard and discretionary conditions of supervised release that apply in this case.

MANDATORY CONDITIONS OF SUPERVISED RELEASE
(As set forth in 18 U.S.C. § 3583 and U.S.S.G. § 5D1.3)

- 1) For any offense, the defendant shall not commit another federal, state or local crime;
- 2) for any offense, the defendant shall not unlawfully possess a controlled substance;
- 3) for offenses committed on or after September 13, 1994, the defendant shall refrain from any unlawful use of a controlled substance and submit to one drug test within fifteen days of release from imprisonment and at least two periodic drug tests thereafter for use of a controlled substance as determined by the court:

The above drug testing condition is suspended based on the determination that the defendant poses a low risk of future substance abuse.

- 4) for a domestic violence crime committed on or after September 13, 1994, as defined in 18 U.S.C. § 3561(b) by a defendant convicted of such an offense for the first time, the defendant shall attend a rehabilitation program in accordance with 18 U.S.C. § 3583(d);
- 5) for a defendant classified as a sex offender pursuant to 18 U.S.C. § 4042(c)(4), the defendant shall comply with the reporting and registration requirements set forth in 18 U.S.C. § 3583(d);
- 6) the defendant shall cooperate in the collection of a DNA sample from the defendant if the collection of such a sample is authorized pursuant to section 3 of the DNA Analysis Backlog Elimination Act of 2000 and the Justice for All Act of 2004; and
- 7) The defendant shall pay any balance on the special assessment, restitution and/or fine imposed against the defendant.

STANDARD CONDITIONS OF SUPERVISED RELEASE

- 1) For any felony or other offense, the defendant shall not possess a firearm, ammunition, or destructive device as defined in 18 U.S.C. § 921;
- 2) the defendant shall not leave the judicial district without the permission of the court or probation officer (travel outside the continental United States requires court authorization);
- 3) the defendant shall report to the probation officer as directed by the court or the probation officer and shall submit a truthful and complete written report within the first five days of each month;
- 4) the defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer;
- 5) the defendant shall provide to the probation officer access to any requested financial information including, but not limited to, tax returns, bank statements, credit card statements, credit applications, etc.;
- 6) the defendant shall support his or her dependents and meet other family responsibilities;
- 7) the defendant shall work regularly at a lawful occupation, unless excused by the probation officer for schooling, training, or other acceptable reasons;
- 8) the defendant shall notify the probation officer ten (10) days prior to any change in residence or employment;
- 9) the defendant shall refrain from excessive use of alcohol;
- 10) the defendant shall not purchase, possess, use, distribute, or administer any narcotic or other controlled substance, or any paraphernalia related to such substances, except as prescribed by a physician, and shall submit to periodic urinalysis tests as requested by the probation officer to determine the use of any controlled substance;
- 11) the defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered;

- 12) the defendant shall not associate with any persons engaged in criminal activity and shall not associate with any person convicted of a felony unless granted permission to do so by the probation officer;
- 13) the defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view by the probation officer;
- 14) the defendant shall notify the probation officer within seventy-two (72) hours of being arrested or questioned by a law enforcement officer;
- 15) the defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court;
- 16) as directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics, and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement; and
- 17) if this judgment imposes a special assessment, restitution or a fine, it shall be a condition of probation or supervised release that the defendant pay any such special assessment, restitution or fine in accordance with the court's order set forth in the Criminal Monetary Penalties sheet of this judgment.

CRIMINAL MONETARY PENALTIES

The defendant shall pay the following total criminal monetary penalties in accordance with the "Schedule of Payments." Unless waived, the defendant shall pay interest on any restitution and/or fine of more than \$2,500, unless the restitution and/or fine is paid in full before the fifteenth day after the date of judgment, pursuant to 18 U.S.C. § 3612(f). The payment options may be subject to penalties for default and delinquency pursuant to 18 U.S.C. § 3612(g).

<u>Total Assessment(s)</u>	<u>Total Fine</u>	<u>Restitution</u>	<u>Mandatory Costs of Prosecution</u>
\$3,300.00	Fine Waived	\$12,026,582.02	\$55,505.62

The defendant shall notify the United States Attorney's Office having jurisdiction over the defendant within thirty days of any change of name, residence or mailing address until all special assessments, restitution, fines, and costs imposed by this judgment are fully paid.

Restitution is ordered in the amount of \$12,026,582.02

The interest requirement on restitution is waived.

Joint and several for the full amount of restitution with co-defendant(s).

<u>Co-Defendant's Name</u>	<u>Case Number</u>	<u>Joint and Several Amount</u>
John J. Leahy	03 CR 922	1,093,566.00
William E. Stratton	03CR922	7,370,739.00

Restitution to be paid as listed below.

Name of victim entitled to restitution (mailing address noted for public entities only)	Restitution Ordered	Priority
NCCI, Administration for National workers, Compensation Reinsurance Pool, C/o state of Illinois, Department of Insurance, Residual Market/Assigned Risk Workers' Compensation Plan, 901 Peninsula Corporate Circle, Boca Raton, FL. 33487	\$1,093,566.00	
City of Chicago, Department of Revenue, City Hall, 121 N. LaSalle Street. Room 107, Chicago, IL. 60602	\$10,933,016.02	

If the defendant makes a partial payment, each payee shall receive an approximately proportional payment unless specified otherwise in the priority payment column above. Pursuant to 18 U.S.C. § 3664(i), all non-federal victims shall be paid in full prior to the United States receiving payment. Pursuant to 18 U.S.C. § 3664(j), if a victim has received compensation from insurance or any other source with respect to a loss, restitution shall be paid to the person who provided or is obligated to provide the compensation. All restitution to victims required by the order shall be paid to the victims before any restitution is paid to such a provider of compensation. Based on the defendant's inability to pay, the costs of incarceration are waived.

SCHEDULE OF PAYMENTS

- Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) fine principal, (5) community restitution, (6) fine interest, (7) penalties, and (8) costs, including cost of prosecution and court costs. If this judgment imposes a period of imprisonment, payment of criminal monetary penalties shall be due during the period of

imprisonment.

- All criminal monetary penalty payments, except those payments made through the Bureau of Prisons' Inmate financial Responsibility Program, are to be by money order or certified check payable to the Clerk of the Court, U.S. District Court, unless otherwise directed by the Court.
- Unless waived, the defendant shall pay interest on any fine and/or restitution of more than \$2,500, unless the same is paid in full before the fifteenth day after the date of judgment, pursuant to 18 U.S.C. § 3612(f). Payment options included herein may be subject to penalties of default and delinquency pursuant to 18 U.S.C. § 3612(g).
- Pursuant to 18 U.S.C. §§ 3613(b) and ©) and 3664(m), restitution and/or fine obligations extend for twenty years after release from imprisonment, or from the date of entry of judgment if not sentenced to a period of imprisonment.

Payment of the total criminal monetary penalties shall be due as follows:

In full:

Due immediately.

In full:

The costs of incarceration and supervision are waived.

Pursuant to 18 U.S.C. § 3664(k) the defendant must notify the court of any material changes in the defendant's economic circumstances. Upon such notice, the court may adjust the installment payment schedule.

Pursuant to 18 U.S.C. § 3664(n), if a person is obligated to provide restitution, or pay a fine, received substantial resources from any source, including inheritance, settlement, or other judgment, during a period of incarceration, such person shall be required to apply the value of such resources to any restitution or fine still owed.

FORFEITURE

Forfeiture is ordered as provided in the attached preliminary order of forfeiture.

The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons: before 2:00 P.M. on July 18, 2005.

RETURN OF SERVICE

I have executed this judgment as follows:

Defendant delivered on _____ to _____
at _____.

By: _____
(Signature)

Name (Print) _____

Title (Print) _____

Date of Imposition of Judgment/Sentencing: May 18, 2005

Elaine E. Bucklo

ELAINE E. BUCKLO
UNITED STATES DISTRICT JUDGE

Dated at Chicago, Illinois this 27 day of May, 2005

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

UNITED STATES OF AMERICA)
)
) No. 03 CR 922-1
)
) Honorable Elaine E. Bucklo
JAMES M. DUFF)

PRELIMINARY ORDER OF FORFEITURE

This cause comes before the Court on motion of the United States for entry of a preliminary order of forfeiture as to specific property pursuant to the provisions of Title 18, United States Code, Section 1963, Title 18, United States Code, Section 982, and Fed. R. Crim. P. 32.2, and the Court being fully informed hereby finds as follows:

(a) On July 22, 2004, a second superseding indictment was returned charging defendant JAMES M. DUFF with a violation of the Racketeer Influenced Corrupt Organizations Act pursuant to the provisions of 18 U.S.C. § 1962(d) and Money Laundering violations pursuant to the provisions of 18 U.S.C. § 1956;

(b) The second superseding indictment sought forfeiture to the United States of specific property pursuant to the provisions of 18 U.S.C. § 1963(a)(1), (a)(2), and (a)(3) and 18 U.S.C. § 982(a)(1);

(c) On January 10, 2005, defendant JAMES M. DUFF entered a voluntary plea of guilty to the charges in the second superseding indictment, thereby making certain property subject to forfeiture pursuant to 18 U.S.C. § 1963(a)(1), (a)(2), and (a)(3) which states in part:

(a) Whoever violates any provision of section 1962 of this chapter...shall forfeit to the United States:

(1) any interest the person has acquired or maintained in violation of section 1962;

- (2) any-
 - (A) interest in;
 - (B) security of;
 - (C) claim against; or
 - (D) property or contractual right of any kind affording a source of influence over; any enterprise which the person has established, operated, controlled, conducted, or participated in the conduct of, in violation of section 1962; and

- (3) any property constituting, or derived from, any proceeds which the person obtained, directly or indirectly, from racketeering activity or unlawful debt collection in violation of section 1962.

(d) Further, additional property is subject to forfeiture pursuant to 18 U.S.C. § 982(a)(1), which states in part:

- (a)(1) The court, in imposing sentence on a person convicted of an offense in violation of section 1956, . . . shall order that the person forfeit to the United States, any property real or personal, involved in such offense, or any property traceable to such property.

(e) As a result of his violation of 18 U.S.C. § 1962(d), to which defendant JAMES M. DUFF pled guilty, the Court shall order the interests of the defendant, jointly and severally with co-defendant William E. Stratton, including but not limited to, at least \$10,000,000, and interests and proceeds traceable thereto, including but not limited to the real property commonly known as 174-182 North Halsted, Chicago, Illinois and legally described as follows:

LOTS 1 AND 2 IN BLOCK 36 IN CARPENTER'S ADDITION TO CHICAGO, IN THE SOUTHEAST 1/4 OF SECTION 8, TOWNSHIP 39 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

Permanent Real Estate Index Numbers: 17-08-434-004-0000, 17-08-434-005-0000 & 17-08-434-006-0000

pursuant to the provisions of 18 U.S.C. § 1963(a)(1), (a)(2), and (a)(3);

(f) Further, as a result of defendant JAMES M. DUFF's violations of 18 U.S.C. § 1956, to which he also pled guilty, the Court shall order the interests of defendant JAMES M. DUFF, jointly and severally with co-defendant William E. Stratton, in property involved in the offense or property traceable to such thereto; including but not limited to funds in the amount of \$3,024,000 pursuant to the provisions of 18 U.S.C. § 982(a)(1);

(g) Defendant JAMES M. DUFF is scheduled to be sentenced on May 16, 2005;

(h) Before or at the time of sentencing, the United States requests that this Court enter a preliminary order of forfeiture against the defendant, for which is he liable, which will include all property, interests and proceeds traceable to violations of 18 U.S.C. § 1962(d) and property involved in the offense or property traceable to violations of 18 U.S.C. § 1956;

(i) If any of the funds in the amounts of the \$10,000,000 and \$3,024,000 and money judgments entered against defendant JAMES M. DUFF as a result of any act or omission of the defendant:

1. cannot be located upon the exercise of due diligence;
2. has been transferred or sold to, or deposited with a third party;
3. has been place beyond the jurisdiction of the Court;
4. has been substantially diminished in value, or
5. has been commingled with other property which cannot be divided without difficulty;

the United States shall request that this Court order the forfeiture of any other property belonging to defendant JAMES M. DUFF up to the value of the money judgment entered against the defendant

pursuant to 18 U.S.C. § 1963(m), 21 U.S.C. § 853(p), as incorporated by 18 U.S.C. 981(b)(1), and Fed R. Crim. P. 32.2, in order to satisfy the money judgment entered by the Court;

(j) Should additional assets become available to satisfy the forfeiture judgment, the United States shall at that time file a motion for substitution of assets before this Court requesting permission to seize such assets and publish notice to the United States' intent to forfeit the property in satisfaction of the forfeiture money judgment entered by the Court, pursuant to the provisions of 21 U.S.C. § 853(p), as incorporated by 18 U.S.C. § 982(b)(1);

(k) The United States requests that the terms and conditions of this preliminary order of forfeiture entered by the Court be made part of the sentence imposed against defendant JAMES M. DUFF and included in any judgment and commitment order entered in this case against him.

Accordingly, it is hereby ORDERED, ADJUDGED and DECREED:

1. That, pursuant to the provisions of 18 U.S.C. § 1963(a)(1), (a)(2), and (a)(3), 18 U.S.C. § 982(a)(1), and Fed R. Crim. P. 32.2, all right, title and interest defendant JAMES M. DUFF has, jointly and severally with his co-defendant William Stratton, in the funds in the amounts of \$10,000,000 and \$3,024,000 and the real property commonly known as 174-182 North Halsted, Chicago, Illinois is hereby forfeited to the United States of America for disposition according to law.

The property is legally described as follows:

LOTS 1 AND 2 IN BLOCK 36 IN CARPENTER'S ADDITION TO CHICAGO, IN THE SOUTHEAST 1/4 OF SECTION 8, TOWNSHIP 39 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

Permanent Real Estate Index Numbers: 17-08-434-004-0000, 17-08-434-005-0000 & 17-08-434-006-0000

2. That, by an act or omission on the part of defendant JAMES M. DUFF, funds in the amounts of \$10,000,000 and \$3,024,000 cannot be located to satisfy the forfeiture judgment; pursuant to the provisions of 18 U.S.C. § 1963(m), 21 U.S.C. § 853(p), as incorporated by 18 U.S.C. 981(b)(1), and Fed R. Crim. P. 32.2, the United States has the authority to forfeit substitute assets to satisfy the money judgments entered by this Court;

3. That, pursuant to the provisions of 18 U.S.C. § 1963(e), the United States Marshal Service shall seize and take custody of the of the real property for disposition according to law;

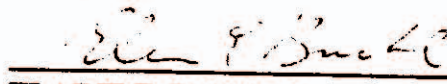
4. That, pursuant to the provisions of 18 U.S.C. § 1963(l)(1), the United States Marshal Service shall publish notice of this order and of its intent to dispose of the property according to law. The government may also, to the extent practicable, pursuant to statute, provide direct written notice to any person known to have alleged an interest in the property that is the subject of the preliminary order of forfeiture as a substitute for published notice as to those persons so notified;

5. Pursuant to the provisions of 18 U.S.C. § 1963(l)(2), if following notice as directed by 18 U.S.C. § 1963(l)(1), any person other than the defendant, asserts an interest in the property that has been ordered forfeited to the United States, within thirty days of the final publication of notice or this receipt of notice under paragraph four (4), whichever is earlier and petitions the Court for a hearing to adjudicate the validity of this alleged interest in the property, the government shall request a hearing. The hearing shall be held before the Court alone, without a jury;

6. Following the Court's disposition of all third parties interests, the Court shall, upon the government's motion, if appropriate, enter a final order of forfeiture, as to the property which is the subject of the this preliminary order of forfeiture, which shall vest clear title in the United States of America;

7. The terms and conditions of this preliminary order of forfeiture are part of the sentence imposed against defendant JAMES M. DUFF and included in any judgment and commitment order entered in this case against him;

8. This Court shall retain jurisdiction in this matter to take additional action and enter further orders as necessary to implement and enforce this forfeiture order.



ELAINE E. BUCKLO
United States District Judge

DATED: 5/22/02

CT

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
v.)	No. 03 CR 922
)	
JAMES M. DUFF,)	
)	
Defendant.)	

MEMORANDUM OPINION

James Duff was charged in a 33 count indictment with engaging in a racketeering conspiracy under 18 U.S.C. sec. 1962(d) involving fraud against the city of Chicago, another fraud scheme involving Workmen's Compensation insurance, and money laundering. He was also charged with tax fraud. Mr. Duff pled guilty to all charges shortly before his trial was to begin. I held a three-day sentencing hearing in his case on May 16-18, 2005 and ultimately sentenced Mr. Duff to 118 months in the custody of the Bureau of Prisons. This memorandum is written for the purpose of explaining the factors that entered into my decision as to Mr. Duff's sentence.

Mr. Duff was indicted in September, 2003, along with six others who were alleged to have participated with Mr. Duff in various criminal activity. Trial was set for October 4, 2004, but reset to January 24, 2005 on Mr. Duff's motion. On December 24, 2004, Mr. Duff notified the Government that he wanted to plead

guilty. When he appeared for his guilty plea, however, on January 6, 2005, he attempted to plead to a factual statement that did not encompass the charges brought by the Government. On January 10, 2005, he again appeared before the court and in a plea colloquy that took four hours due to his reluctance to admit to the facts that would sustain the charges, eventually pled guilty to the charges in the superceding indictment. Trial of four of the other defendants began on January 24, 2005. The jury returned a verdict of guilty as to all but one of these defendants on February 24, 2005. One of the remaining defendants, who was ill, is scheduled for trial this fall. The last defendant was Mr. Duff's mother, Patricia Duff. She was dismissed when it was determined that she was not competent to stand trial.

In summary, the indictment to which Mr. Duff pled guilty charged, and the evidence demonstrated, that Mr. Duff obtained in excess of \$100,000,000 in contracts from the City of Chicago that had been set aside for minority and women owned businesses by falsely representing that two companies actually owned and controlled by him were owned and operated either by his mother or another defendant, William Stratton. Neither of these defendants in fact had control or operated either business. Mr. Stratton, an African American, was essentially the chauffeur and companion of Mr. Duff's father. His mother had nothing to do with the business. To disguise his actual ownership and control of these businesses,

Mr. Duff created another company to which he diverted millions of dollars in proceeds from the City contracts. He pled guilty to money laundering charges in connection with this conduct. In a second fraudulent scheme, Mr. Duff over a long period of time misled and concealed from insurance companies the fact that most of the workers employed by his companies were manual laborers, which required a higher workman's compensation premium, rather than clerical workers, which he represented the workers to be. Mr. Duff also pled guilty to income tax fraud involving two of his companies over a three-year period.

The principles involved in determining Mr. Duff's sentence are directed by *United States v. Booker*, 125 S. Ct. 738 (2005). In that case the Supreme Court held that the United States Sentencing Guidelines must be "merely advisory" in order to avoid violating the Sixth Amendment to the United States Constitution, and that the trial judge retains "broad discretion in imposing a sentence within a statutory range." *Id.* at 750. In addition to considering the Sentencing Guidelines, I am to consider the factors listed in 18 U.S.C. § 3553(a).

The Government and Mr. Duff disagreed over the appropriate Guidelines Manual that should be considered in this case. While the Government agreed that the 1998 Manual would be applicable to Mr. Duff's co-defendants, it argued that because he continued to reap the benefits of the City fraud and to divert money from the

companies involved in the City fraud to a separate company through 2001, the 2001 Manual should apply. I concluded that since his companies had been "decertified" as minority/women owned businesses before this time, I would look at the 1998 Manual in considering his sentence.

Mr. Duff's three-day sentencing hearing was largely consumed with an attempt to determine "loss" under the Sentencing Guidelines. The first "loss" issue involved the harm caused by Mr. Duff successfully defrauding the City of Chicago out of more than \$100,000,000 in contracts. The Probation Department determined that the amount of loss involving this fraud was \$112,406,580, which was the value of the benefits diverted from the City's WBE/MBE set aside program. The Government supported this position, arguing that USSG sec. 2F1.1, Application Note 8(d) in the 1998 Guideline Book, or 2(F)(ii), Special Rules, to USSG sec. 2B1.1 (2001 Book), both provide that "loss is the value of the benefits diverted from intended recipients or uses" (1998 Book) or "in the case involving Government benefits (...entitlement programs), loss shall be considered to be not less than the value of the benefits obtained by unintended recipients or diverted to unintended uses,..." (2001 Book). Mr. Duff contended that his company performed the work under the contract and that therefore there was no loss at all. The position of the Probation Department and the Government is supported by *United States v. Brothers Const. Co. of Ohio*, 219 F.3d 300 (4th

Cir. 2000). In *Brothers*, like this case, a contractor obtained contracts intended for minority owned businesses by fraudulently misrepresenting the ownership of his company. The Fourth Circuit upheld the district court's determination that loss should be the amount of the contract. I nevertheless held that for purposes of determining a Guideline "loss" I would rely on Seventh Circuit authority which has held that loss is equal to the contract price minus the benefit provided, which in this case I determined to be the profit on the contracts.¹ I did, however, take loss in the larger amount of the contract diversion into account in determining the appropriate sentence under 18 U.S.C. sec. 3553, as noted during sentencing and discussed further below. With regard to the amount of the profit, the Government and Mr. Duff put on evidence. I

¹ *E.g., United States v. Schneider*, 930 F.2d 555, 558 (7th Cir. 1991). In *Schneider*, the Government failed to prove any loss in a case in which a contract was performed. In this case, even if Mr. Duff's argument were accepted that the City got the value of the cleaning services for which it contracted, the profit to Mr. Duff is not a value given the City and the Government reasonably proved this amount as loss in this case. In writing this opinion, I am less convinced that I was correct in determining "loss" not to be the entire amount of the contract. *Schneider* did not involve a minority/women set aside program in which the contract amounts represent business to be provided to historically disadvantaged groups. The loss of that money for those programs exists whether or not the City obtained services. Under the Guidelines, the preferable route might have been to follow *Brothers*, but to consider a reduction as a downward departure. *United States v. Lane*, 323 F.3d 568, 588 (7th Cir. 2003) ("Once the amount of the loss is calculated under the guidelines, the court has the discretion to modify the amount of loss to more accurately reflect the economic realities of the crime ...") But as stated above, I did take the larger amount into consideration in determining a reasonable sentence under *United States v. Booker*.

agreed with the Government's determination for reasons stated during the sentencing hearing and calculated the profit as \$10,933,000.

Loss was also calculated on Mr. Duff's insurance scheme. The Probation Department concluded that this loss was the amount of unpaid workers' compensation insurance premiums. The Government agreed with this approach. Mr. Duff maintained that at most this was \$300,000 (arguing that since premiums exceeded paid claims there was really no loss). I concluded that the Government's evidence was more persuasive and its expert more credible than Mr. Duff's and determined that the loss, after offsets for revised experience modifiers, was approximately \$1,093,000. I also heard testimony with respect to the loss on the tax counts and giving Mr. Duff the benefit of the doubt as to the meaning of certain provisions under the Guidelines, allowed him credit for the tax payments made by others to the federal Government. (While he improperly deducted as salaries millions of dollars that went to family members which were in reality gifts, they paid income tax on the amounts. The Government belatedly attempted to show that lost gift tax was not paid, which would have changed the equation, but I concluded that there was insufficient evidence of the amount that should have been paid.) As a result, for purposes of the Guidelines, I limited loss to the base offense level (increased to level 12 under § 2T1.1(b)(1)).

At the sentencing hearing I made various other Guidelines rulings: that each scheme involved more than minimal planning, that the offense conduct (other than the tax scheme) involved sophisticated means, that Mr. Duff was a leader and organizer and that the insurance scheme victimized 50 or more insurance companies.

The Government objected to any reduction for acceptance of responsibility. As noted above, Mr. Duff's initial attempt to plead "guilty" was based on a factual statement that was a blatant attempt to avoid conviction on most of the charges. When I rejected that attempt, he did enter into a plea to the actual charges in this case, but his plea took hours due to his efforts to admit the very fewest facts that I and the Government would find necessary for a valid plea. At the sentencing hearing, Mr. Duff presented the testimony of two experts, one of whom I did not find credible, and one of whom was not provided evidence by Mr. Duff that the expert agreed was relevant to his opinion. At the hearing, Mr. Duff's attitude, expressed through the expert opinions and arguments of his attorneys, continued to be that no one had really been hurt by his fraudulent conduct or tax evasion. He continued to argue that no one else could competently have done the work his companies did for the City. He also continued to take the position that Mr. Stratton and family members were paid for actual work, contrary to the evidence in this case. Although Mr. Duff gave a prepared speech just before sentencing, it was clear to me throughout Mr. Duff's

sentencing hearing that, while like most defendants he is very sorry that he will have to pay the consequences of his actions and is sorry that his family will be hurt, he has never accepted moral responsibility for any wrongdoing.

The Seventh Circuit has held "that in the absence of evidence of sincere remorse or contrition for one's crimes, a guilty plea entered for the apparent purpose of obtaining a lighter sentence does not entitle a defendant to a reduction for acceptance of responsibility." *United States v. Hammick*, 36 F.3d 594, 600 (7th Cir. 1994). "Rather than relying solely on the defendant's guilty plea to award the reduction, the sentencing judge is required to look beyond formalistic expressions of culpability and to determine whether the defendant has manifested an acceptance of personal responsibility for his offense in a moral sense." *Id.* The judicial inquiry "is a search for expiatory deeds and, failing those, ... for conscience." *Id.*, quoting from *United States v. Beserra*, 967 F.2d 254, 256 (7th Cir. 1992). A defendant can be required to "provide a complete and credible explanation of the conduct involved in the offense of conviction." *Hammick* at 599. The defendant has the "burden of demonstrating that he has actually accepted responsibility for his actions." *United States v. Taliaferro*, 211 F.3d 412, 414 (7th Cir. 2000). Lies and frivolous denial of relevant conduct that the court has concluded is true is

inconsistent with acceptance of responsibility. *Id.*; 1998 Guidelines, § 3E1.1, application note 1(a).

Mr. Duff argued that given his guilty plea I had no discretion to deny him acceptance of responsibility, citing *United States v. Carroll*, 346 F.3d 744 (7th Cir. 2003). In *Carroll* the Court of Appeals concluded that the district court erred in concluding that a defendant had obstructed justice and in otherwise denying acceptance of responsibility, noting the defendant had participated in numerous proffer sessions in which he had described his illegal conduct in detail. The language of the opinion, however, can be read to deny discretion to deny acceptance of responsibility in any case in which a defendant provides a "bare-bones" description of guilt. *Id.* at 750. While I believe that interpretation would be a change from the approach and discretion noted in the cases discussed above, I stated at the sentencing hearing that it is possible that under *Carroll*, on these facts if I were limited to the Sentencing Guidelines that I could not deny the Guideline reduction for acceptance of responsibility despite my belief that his guilty plea is simply "spin control." Since this sentence, under *Booker*, is not limited to consideration of a narrow range following a strict determination of points under a particular Guidelines Manual, however, I considered the sentencing range that would be applicable with or without acceptance of responsibility. See *United States v. Crosby*, 397 F.3d 103, 112 (2d Cir. 2005), in which the court

indicated that in post-*Booker* sentences, there is leeway to consider more than one Guideline range under alternative factual determinations.

Booker requires that I consider and specifically look at the factors listed in 18 U.S.C. sec. 3553(a) in determining the appropriate sentence. Foremost among my consideration was the directive that that the sentence be "sufficient but not greater than necessary, to comply with the purposes set forth" in paragraph 2 of the paragraph. Those include the need for the sentence "to reflect the seriousness of the offense, to promote respect for the law, and to provide just punishment for the offense; ... to afford adequate deterrence to criminal conduct; ... to protect the public from further crimes of the defendant...." The statute also directs me to consider the nature and circumstances of the defendant and the kinds of sentences available.

I first looked at the seriousness of Mr. Duff's offense. Mr. Duff's wrongdoing was extensive. His fraud on the City of Chicago and on the insurance companies each took place over many years. As the City noted in a letter to the court in connection with Mr. Duff's sentencing hearing, Mr. Duff's actions in obtaining over \$100,000,000 in City contracts under the false pretense that his companies were minority or women owned and run harmed the credibility of the City's programs, and of course the opportunities for minority/women owned businesses to gain entry and experience in

the marketplace. Mr. Duff, out of pure greed, successfully enriched himself and his family, and to the extent of more than \$100,000,000 in contracts, prevented legitimate minority/women owned businesses from developing their own experience, credibility, employees, and livelihood. At the same time Mr. Duff was engaged in defrauding the City of Chicago, he engaged in a twelve-year fraud in connection with workmen's compensation insurance. In that scheme, Mr. Duff succeeded for many years in paying low cost premiums for clerical workers while he in fact employed much higher risk manual laborers. Mr. Duff was also guilty of income tax fraud over a three-year period.

Mr. Duff's criminal conduct is worse because of the people he corrupted. Six people were indicted with Mr. Duff. Three have been found guilty, one is set for a later trial, and his own mother failed to stand trial only because of her deteriorating health. In addition five others who testified at trial were given immunity from prosecution because of their cooperation but were clearly participants in his illegal ventures. Mr. Duff corrupted (obviously, with their cooperation) all of the people found guilty or given immunity.

In sentencing Mr. Duff for these crimes, I was also required to consider the need for the sentence "to promote respect for the law, and to provide just punishment for the offense; ... to afford adequate deterrence to criminal conduct; ... to protect the public

from further crimes of the defendant...." It was clear that a substantial sentence was required to deter others from engaging in similar fraud, to punish the lengthy and extensive criminal conduct, and to promote respect for the law. I also believed that a substantial sentence was necessary to deter further crimes by Mr. Duff. His criminal actions, covering a multitude of victims, statutes and schemes, went on for a decade or more.

Section 3553 also requires that I consider the nature and circumstances of the defendant. At sentencing, as is common, letters written in support of Mr. Duff indicated he is a good family man. But the crimes to which Mr. Duff pled guilty, and the testimony heard at trial that implicated him, paint a different picture of Mr. Duff.² Mr. Duff's actions were not driven by any even perceived necessity. Motivated purely by greed, he was willing to risk harm to all those who worked with him, commanding them to participate in his conduct, and even requiring criminal conduct by his mother. At trial, there were witnesses who were clearly afraid of Mr. Duff, and there was testimony that he threatened physical harm to at least one witness and his family when he believed the witness might stand in the way of his obtaining the City contracts.

² The sentencing was delayed several times so that both of Mr. Duff's attorneys would have the opportunity to read the trial transcript. While they indicated prior to the sentencing hearing that they intended to refute specific "untrue" trial testimony, no evidence at the sentencing gives me any reason to doubt the facts noted here.

After considering each of these factors, and the advisory Guidelines, I concluded that a sentence of 118 months was "sufficient, but not greater than necessary" to satisfy the concerns expressed in the statute. The sentence also included restitution, the imposition of costs, and a term of supervised release.

ENTER ORDER:



Elaine E. Bucklo
United States District Judge

Dated: May 27, 2005