

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF ILLINOIS
URBANA DIVISION**

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
vs.)	Case No. 17-CR-20042-001
)	
KAMI MILLER,)	
)	
Defendant.)	

DEFENDANT MILLER’S SENTENCING COMMENTARY

NOW COMES the Defendant, KAMI MILLER, by and through her attorney, J. STEVEN BECKETT of BECKETT & WEBBER, P.C., and for her Sentencing Commentary states as follows:

1. Offense Conduct

This fraud case is unusual. It involves the creation from scratch of a mass transit district in Central Illinois (East Central Illinois Mass Transit District referred to herein as ECIMTD) and the wrongful conduct of the Executive Director of the District. The mission of the district was a noble one, to provide transportation for senior and disabled citizens of the region that it represented. The district had a board of trustees, but its direction was largely that of Defendant Kami Miller’s leadership (hereinafter KAMI). Under her leadership, the ECIMTD successfully discharged its mission and provided necessary services to those it was intended to help. The difficulty was that it was a fledgling organization and KAMI took it upon herself to assure its success, but in doing so failed to recognize basic organizational policy to protect against the wrongful use of grant funds received by ECIMTD from Federal Transit Administration (FTA).

FTA funds cannot in any fashion be used to pay personal expenses of the Executive Director. The ECIMTD had no credit card, so KAMI obtained a Capitol One credit card in her name, with the card designated on its face as an ECIMTD used card. The card was used for

ECIMTD expenses and each month when the credit card bill came, ECIMTD funds were used to pay the balance. The balance was paid in full each month. Those expenses included restaurant meals for KAMI, where there was no board-adopted policy that permitted the reimbursement of those expenses. Those expenses included the purchases of employee gifts where there was no board policy that permitted the purchase of employee gifts. These gifts were purchased during the year for a holiday event during the Christmas season. The use of the card was so problematic that an audit of the statements and expenses could not clearly delineate what was an appropriate ECIMTD expense and what was a wrongful expense that benefitted KAMI personally. KAMI, as Executive Director, bore the responsibility of the proper use of that credit card and failed.

The ECIMTD had no policy for retirement benefits for KAMI as Executive Director. In the belief that such benefits were proper, over the course of three years, KAMI caused ECIMTD payment to an IRA retirement account in the total amount of \$9,000. The fact that checks for the IRA payments were at least in two instances countersigned by a board officer did not make the payments proper where there was no board action to approve the IRA payments.

In short, KAMI discharged her duties as executive director without obtaining the necessary express authority. The credit card system problem was exacerbated when, in the Spring of 2012, it was discovered that another ECIMTD employee, Ashley Miller (KAMI'S daughter-in-law), had taken advantage of the situation and charged over \$50,000 of personal expenses using a Capital One credit card that was supposed to be used by her to purchase ECIMTD supplies.

KAMI took responsibility for the misuse of the credit card and for the wrongful IRA payments by pleading guilty in this case, but there is more to her acceptance than the mere plea agreement with the government. On two occasions, KAMI signed tolling agreements with the government so that the applicable limitations period would not run and the parties could have

meaningful discussion to assess the potential revenue loss of grant funds and for reasoned discussion about the conclusion of this case. (Tolling agreements are attached as exhibit 1). KAMI also proffered to the U.S. Attorney and FTA and FBI agents so that an objective analysis of the credit card expenses and a reasoned calculation of restitution should occur.

In the end, the plea agreement and the parties' discussion have produced a just plea agreement, and even an agreed recommended sentence for the Court to consider. These agreements are set forth in Defendant's plea agreement where she entered a plea of guilty to the offense of Mail Fraud, 18 U.S.C. §1341. That plea agreement measured the restitution at \$20,489.67, which includes \$9,000 in IRA payments and \$11,489.67 in unauthorized credit card expenses. KAMI is to pay the restitution in full on the date of sentencing to the Clerk of the Court, as well as the \$100 Special Assessment due in this case.

The plea agreement also reflects a recommended sentence for the Court's consideration of 3 years' probation, with four months of home confinement, subject to agreed travel to the Dominican Republic for purposes of attending a long-planned family wedding. Under this recommended sentence, there would be no fine.

2. Federal Sentencing Guidelines

The Court must first calculate the applicable federal sentencing guidelines accurately, and then evaluate the sentencing factors under 18 U.S.C. §3553(a) and impose a sentence that is reasonable but not greater than necessary. *Gall v. United States*, 552 U.S. 38, 47 (2007); *U.S. v. Maulding*, 627 F.3d. 285 (7th Cir. 2010).

The Base Offense Level under §2B1.1(a)(1) for the mail fraud charge set forth in the information is 7, and Specific Offense Characteristic under §2B1.1(b)(1) (C) is 4, given the loss amount of \$20,489.67. This results in an Adjusted Offense Level of 9. KAMI is given 2 points

credit for Acceptance of Responsibility under §3E1.1(a). The Total Offense Level is thus 9 (PSR, paragraphs 20 - 28, page 5).

KAMI'S lack of a prior record results in a Criminal History score of 0, and a Criminal History Category I. (PSR, paragraphs 29 - 31, page 6). The Federal Sentencing Guideline Provisions for an offense level of 9 and criminal history Category I is Zone B, 4 - 10 months. (PSR, paragraphs 50 - 51, page 10). The Federal Sentencing Guidelines analysis is advisory. *United States v. Booker*, 543 U.S. 220 (2005).

3. § 3553(a) Factors and Analysis

In fashioning a sentence that is sufficient, but no greater than necessary, the Court must consider additional factors besides the correct Federal Sentencing Guidelines calculation, including: (1) the nature and circumstances of the offense; (2) the personal history and character of the defendant; (3) the seriousness of the offense; (4) respect for the law; (5) punishment; (6) deterrence; (7) protection of the public from the defendant's potential future criminal conduct; (8) rehabilitation of the defendant; and (9) the kinds of sentences available. 18 U.S.C. §3553(a).

a. The Nature, Circumstances, and Seriousness of the Offense

The conduct under scrutiny by the Court is fraud involving the wrongful expenditure of government funds. It is nonviolent. Defendant treated her duty as Executive Director in a too-personal way and made serious misjudgments about the handling of ECIMTD finances, indeed so serious that they were criminal. It is always difficult for one to admit to the criminality of arguably ambiguous behavior, but KAMI took that step and admitted to this Court that she committed a criminal act. That stigma will be with her forever.

While KAMI freely admits her responsibility, the Guideline calculations do not factor in the nonviolent nature of the offense, nor do they account for her personal history and other §3553(a) factors.

b. Personal History and Character of the Defendant, Deterrence, Recidivism, and Rehabilitation

KAMI is 58 years old. She has lived in Edgar County, Illinois her entire life. She has been married for 38 years. She and her husband Scott have two children, Andrea “Brett” Leevy, age 36, and Shane Miller, age 34. Both are employed and have families. KAMI has maintained her family relationships and her family is supportive of her. Her life’s employment is in a farming family and as co-owner of a small, local business. She has the stability of a family, community ties, and solid daily endeavor.

KAMI spent three years attempting to create a successful mass transit district. She spent the time necessary to learn her job and to discharge her duties. There is no criticism of her effort, but in some sense, she was not in a position that was well-suited for her, even with her commitment to make it a success. She admits that she was the “boss”, that she set up the financial system, and that she made a serious mistake that turned into a criminal offense.

c. Punishment and Deterrence

As far as punishment, deterrence, recidivism, and rehabilitation are concerned, the Court must consider KAMI’s dealings with the Court system, as well as her positive family and community background. To begin the work of rehabilitation, one must admit wrongdoing and one must have the capacity to learn from those life mistakes to provide for better actions in the future. The message sent by the KAMI’s conviction and sentence in this case is that, even with the best of motives, one must be ever diligent, especially when federal funding is part of an organizations’ financial structure. The recommended sentence that both the Government and Defendant have tendered achieves that message.

d. Respect for the Law

KAMI cooperated with law enforcement and plead guilty. She waived her right to appeal or for collateral attack. Her admissions have not been characterized by excuses. The fact that she has no previous record of criminal conviction, has complied with all pre-sentence obligations and requirements, and coupled with her full cooperation, indicates that she has a deep respect for the law and is unlikely to engage in criminal actions in the future.

4. Requested Sentence

This is not a mandatory imprisonment offense. Due to KAMI's history of family support, community involvement, and other mitigating factors under § 3553(a) as analyzed above, the recommended sentence is an appropriate sentence that is plainly "sufficient, but not greater than necessary, to comply with the purposes set forth in paragraph (2)" of §3553(a). Indeed, a community-based sentence that includes home confinement in Zone B of the guidelines is consistent with sentencing objectives and achieves a goal of increasing success with restitution, based on Defendant's ties to the community, her stable history, and her family's needs. See *U.S. v. Tomko*, 562 F.3d 558 (3rd Cir. En Banc, 2009)(in tax evasion case, District court's sentencing of home confinement and probation was not an abuse of discretion where the defendant had no prior record, long standing ties to the community, and engaged in substantial charitable work.)

Restitution is required, in the amount of \$20,489.67, and will be paid on the sentencing date. Regarding a fine, KAMI and her husband have assets and meeting her restitution obligation recognizes that financial impact of this case. Restitution has been recognized by the parties as the priority and no fine should be imposed.

Kami Miller recognizes that her plea is pursuant to Federal Rule of Criminal Procedure 11(c)(1)(B) and thus is not a "C" agreement (informal description of a Rule 11(c)(1)(C) plea

agreement). However the parties have cooperated to such an extent, the Government and defense counsel suggest that the sentence of 3 years' probation, four (4) months home confinement, payment of restitution of \$20,489.67, and the Special Assessment represents a reasonable sentence that is consistent with the ends of justice, and ask that the Court concur in their judgment on the matter.

Respectfully submitted,
KAMI MILLER, Defendant
By: /s/ J. Steven Beckett
J. Steven Beckett, her attorney

J. STEVEN BECKETT
BECKETT & WEBBER, P.C.
508 South Broadway
Urbana IL 61801
(217) 328-0263
(217) 328-0290 FAX
E-mail: steve@beckettwebber.com

CERTIFICATE OF SERVICE

I hereby certify that on December 8, 2017, I electronically filed the above Defendant Miller's Sentencing Commentary with the Clerk of Court using the CM/ECF system which will send notification of such filing(s) to the following:

**Eugene Miller, Asst. United State Attorney; United States District Courthouse
201 South Vine Street, Urbana IL 61801**

and I hereby certify that on December 8, 2017, I mailed by United States Postal Service, first class postage prepaid and legibly addressed, the document(s) to the following non-registered participants:

N/A

/s/ J. Steven Beckett

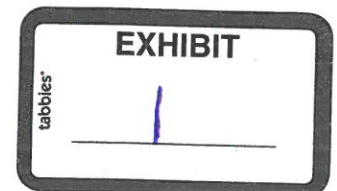
J. STEVEN BECKETT,
Counsel for Defendant

**J. STEVEN BECKETT
BECKETT & WEBBER, P.C.**
508 South Broadway
Urbana IL 61801
(217) 328-0263
(217) 328-0290 FAX
E-mail: steve@beckettwebber.com

**AGREEMENT CONCERNING THE TOLLING OF THE
STATUTE OF LIMITATIONS**

I, Kami Miller, am aware that:

1. The Federal Bureau of Investigation, the United States Department of Transportation, the United States Attorney's Office and the federal Grand Jury have been investigating my use of grant monies originally awarded to the East Central Illinois Mass Transit District concerning certain matters for a period of time.
2. The statute of limitations requires that criminal charges, including criminal fraud charges, be indicted within a certain period of time and if such charges are not brought within that time period they are barred.
3. My attorney has advised me that it is the intention of the United States Attorney's Office to present this matter to the Grand Jury for indictment. My attorney wants to continue discussions with the United States Attorney's Office in order to attempt to influence the United States Attorney's Office's decision on whether to seek an indictment or, in the alternative, whether to allow me to enter a plea to a criminal information and further allow me to cooperate in other aspects of this matter. That cooperation may, at the discretion of the United States Attorney's Office, result in a reduction of any penalties I might face at sentencing. In order for such discussions to be meaningful, it must take place prior to the matter being presented to the Grand Jury for indictment. My attorney and the attorney for the government agree that it would be beneficial to continue discussions for an additional 90 days. At this time my attorney has advised me that this additional time is needed to make the full benefit of my cooperation possible.
4. Based upon discussions with my attorney, I believe that it is in my best interests to request the United States Attorney's Office to not present this matter for indictment until May

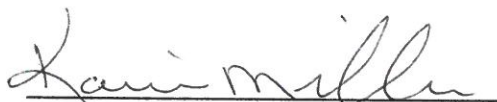


15, 2017, at the earliest, on the condition that I agree to toll the statute of limitations for the period from March 16, 2017, through May 15, 2017.

5. I understand and agree that by signing this agreement to toll the statute of limitations for the period from March 16, 2017, through May 15, 2017, any criminal charges that would have been barred by the statute of limitations during that period will not be barred by the statute of limitations so long as an indictment or information is returned on such charges by May 15, 2017.

6. I have read this agreement and discussed it with my attorney and fully understand the consequences of signing this agreement. No promises, representations or inducements of any kind other than those contained in this agreement have been made to me or to my attorney.


I, therefore, knowingly and voluntarily agree to the tolling of the statute of limitations for the period from March 16, 2017, through May 15, 2017, as set forth in this agreement.



Kami Miller

March 20 2017


Date



J. Steven Beckett
Attorney for Kami Miller

March 17, 2017

Date



John E. Childress
Assistant United States Attorney

3. 24. 17

Date

**AGREEMENT CONCERNING THE TOLLING OF THE
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I, Kami Miller, am aware that:

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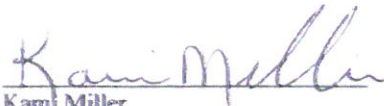
4. Based upon discussions with my attorney, I believe that it is in my best interests to request the United States Attorney's Office to not present this matter for indictment until

September 10, 2017, at the earliest, on the condition that I agree to toll the statute of limitations for the period from August 12, 2017 to September 10, 2017.

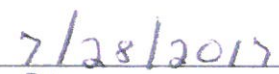
5. I understand and agree that by signing this agreement to toll the statute of limitations for the period from August 12, 2017, through September 10, 2017, any criminal charges that would have been barred by the statute of limitations during that period will not be barred by the statute of limitations so long as an indictment or information is returned on such charges by September 10, 2017.

6. I have read this agreement and discussed it with my attorney and fully understand the consequences of signing this agreement. No promises, representations or inducements of any kind other than those contained in this agreement have been made to me or to my attorney.

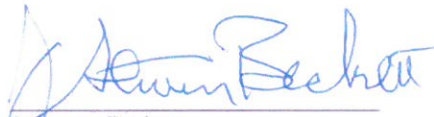
I, therefore, knowingly and voluntarily agree to the tolling of the statute of limitations for the period from August 12, 2017, through September 10, 2017, as set forth in this agreement.



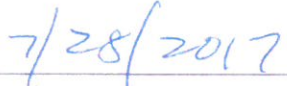
Kami Miller



Date



J. Steven Beckett
Attorney for Kami Miller



Date

John E. Childress
Assistant United States Attorney

Date