

SCANNED

UNITED STATES FEDERAL COURT
DISTRICT OF MAINE

U S DISTRICT COURT
DISTRICT OF MAINE
PORTLAND
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UNITED STATES OF AMERICA)
)
v.)
)
WALTER SCOTT FOX III)
)
)
Defendant)

CASE NO. 2:14-3-001

DEFENDANT'S SENTENCING MEMORANDUM

I. SUMMARY

Defendant Walter Scott Fox III (hereinafter "Scott" or, alternatively, "the defendant") submits the following Memorandum of Law in support of his argument that his sentence be commensurate with an Offense Level of 29, and a Guideline Range of 87-108 months.

On February 4, 2012, Scott pled guilty to a two-count Information, which charged him with Count 1: Bank Fraud, and Count 2: Attempt to Evade or Defeat Tax. The pre-sentence report (PSR) in this case places Scott at a total offense level of 31, criminal history of I, with an advisory sentencing range of 108-135 months incarceration.

The Defendant has accepted full responsibility for his actions, and is extraordinarily remorseful for the harm he has caused to his victims, and to his family. Scott's wife of thirty-six years, Shirley, is completely dependent on him, and will suffer

immensely in his absence. These factors, coupled with his mental condition throughout the period relevant to this matter provide strong support in favor of a variance sentence.

II. DEFENDANT'S PERSONAL HISTORY

A. Family Life

Scott's personal life has been marked by turmoil, abuse, and loss, since he was a young child. The son of a prominent local accountant, Walter Scott Fox, Jr. ("Scott Fox, Jr."), and a homemaker, Angela Fox, Scott was born on October 24, 1957 in Boston, and has two younger siblings. Scott's brother, Wesley Fox, age forty-eight, lives in Virginia and is married with three children and is an agent with the Naval Criminal Investigative Service (NCIS). His sister Deborah Fox-Lilley is fifty-eight, is married and lives in Damariscotta, Maine, and works for L.L. Bean. Scott's mother, Angela, lives in Cumberland, Maine, and remains very close with her son. In a letter to the Court, attached hereto as Exhibit 1, she writes, "As for myself, I am 80 years old and need him badly."

When Scott was five, the family moved to Maine, where Scott Fox, Jr. became a successful Certified Public Accountant. He was also an abusive alcoholic who masked his abusive patterns with a patina of professionalism and geniality that belied the true goings on in the Fox home. He was able to physically and emotionally abuse his wife with impunity, in part because he was well-respected within his community. His wife and children were put in an untenable position – who would believe them that a successful and well-regarded professional was in fact an alcoholic abuser? He provided for them financially – ski trips, sailing, tennis, vacations – but behind closed doors, he hit

and berated Angela, leaving his children to watch as he repeatedly demeaned and abused her.

Scott, unable to protect his mother, disengaged emotionally. A student at North Yarmouth Academy, he often smoked marijuana and drank, and spent his junior year abroad in Germany. His family was wealthy, and Scott was able to maintain a façade. On the one hand, he was a spoiled child, dabbling in substance abuse and spending time sailing and skiing, on the other, he was totally powerless, stripped of personal agency by an abusive father. After coasting through his adolescence, Scott enrolled at Tulane University in the fall of 1976.

When Scott was eighteen, Scott Fox, Jr. suddenly abandoned his wife and children. He began another life, marrying a much younger woman, and completely cutting ties with his first family. He abruptly withdrew all financial support, and refused to continue paying Scott's college tuition at Tulane University. For the first time, Scott was without financial security. He was also without a paternal figure at one of the most formative times of a young person's life. Scott was forced to withdraw from Tulane, but continued living in New Orleans. Scott began floundering. His development from adolescent to adult, already fraught with pain as a result of his powerlessness over the domestic violence in his home, became even more torturous. In many ways, Scott has been unable to move beyond the emotional maturity of his eighteen-year old self.

While enrolled at Tulane, Scott met his wife, Shirley, and continued his relationship with her following his withdrawal. They were married eight months after they first met. Shirley, from New Orleans, disclosed to Scott shortly before their wedding that she had a one-year-old daughter, Tonia, who was being raised by Shirley's

mother. Scott's relationship with Shirley marked the first of a series of scenarios in which he found himself able to "rescue" someone he cared about, in a way that he had never been able to rescue his mother and siblings. [REDACTED]

[REDACTED] Before his father stopped offering Scott financial support, Scott was able to expose her to his own lifestyle. After his father withdrew support, Scott became determined to once again provide Shirley with that lifestyle.

For the first two years of their marriage, Scott and Shirley lived in Florida, and he was paid hourly to work at a marina. In 1980, they moved to Maine, and Scott attended night classes at the University of Southern Maine, earning a Bachelor of Science in Economics in 1984. Throughout college, he worked two jobs, and he graduated with honors. Directly following graduation, he enrolled in the MBA program at Southern New Hampshire University in Brunswick, Maine, from which he graduated in 1986. In 1984, he was hired by Casco Bank as an auditor, before being promoted to a position in their Commercial Loan Division later that year. By then, their son had been born, and Scott and Shirley were focused on building their family.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] As Scott became more and more mentally unwell, he invested heavily in the Boathouse as a means of providing for Shirley's emotional needs.

[REDACTED]

Scott and Shirley have two children together, Charles ("Charlie"), 32 years old, and Sara, age 26. Charlie and Sara were the center of Scott and Shirley's lives, and Scott was determined to provide for them both emotionally and financially. He encouraged their love for skiing and sailing, and pursued those sports with them, facilitating the family bond that he yearned for as a child. Scott also dedicated himself to facilitating their success. [REDACTED]

he sent Charlie to Kent's Hill School and Sara to Carrabassett Valley Academy to ski, before supplying her with tutors through an online high school so that she could compete in sailing at a professional level.

In the later years of his scheme, Scott became increasingly unstable. One symptom of this instability, discussed further below, was an "addiction" to escorts. He frequently obtained sex in exchange for money, and on two occasions, developed relationships with escorts. The most significant of these was his relationship with a woman named Cherish, which began in 2008. Scott paid her rent, and provided her with money each week, bought her a house, paid her mortgage and property taxes, and bought a car for her. He also felt that he gave her attention and commitment, and that he was rescuing her. Scott developed a bond with her one-year old son, as [REDACTED]

[REDACTED]

Eventually, Shirley found out about his affair with Cherish, and though he moved out of the family home for a period of time, Shirley and Scott have stayed married and live together.

Scott and his wife and daughter are very close, but he is now estranged from his son. Scott's thirst for providing for his family became virtually unquenchable. He felt that to be a successful husband and father, he needed to provide not only emotional support, but the types of possessions and experiences that his father had provided Scott before abandoning him. At the outset of his career, Scott earned \$22,000 a year, and when he left his position in 2012, he was earning approximately \$100,000 a year. His own limitations stood in the way of greater financial success, but his pathology was such that to admit that he could not provide for his family in the way that his father provided for him as a child, would have been to face his deep-seeded mental illness, his dark fears of inadequacy, and his own failure.

B. Mental Condition

Beginning in 2009, Scott initiated therapy with two different providers in an effort to address ongoing psychological concerns. The first, Dr. Zeiff, treated Scott between December of 2009 and September of 2010, over the course of twenty visits. Dr. Zeiff's notes reflect Scott's ambivalence towards his relationship with his mistress, and his distress over the damage it wrought on his relationships with his wife and children. Exhibit 2, Dr. Zeiff's Counseling Notes. Notably, there is no mention of any disclosures regarding the scheme in which he had by then been engaged for over fifteen years. Nor did Scott reveal concerns over his professional life to the next therapist he met with, Ms.

Valliere, from whom he sought treatment from September of 2010 through December of 2011. Notes from those sessions offer further insight into his ambivalence regarding his family, his marriage, and a lengthy extra-marital relationship. They also reflect a man very much in the throws of anxiety and depression. Exhibit 3, Ms. Valliere's Counseling Notes. One of the most glaring signs of Scott's emotional distress was his "addiction to escorts," which is referenced by Dr. Zeiff, and by Ms. Valliere. In many ways, this is the most unclouded example of his pathological need to rescue those around him, particularly women. His failure to rescue his mother from his father is thrown into stark relief by his persistent "rescuing" of escorts, particularly with regard to his relationship with Cherish.

It is only since the initiation of the matter now before the Court that he has been subject to a thorough psychological examination, conducted by Dr. Charles L. Robinson. Dr. Robinson diagnosed Scott with a form of depression known as dysthymia, which is a chronic condition characterized by feelings of unworthiness, under-appreciation and a paradoxical dance between dependence and dominance. See Robinson Report, Filed Under Separate Cover, 15.

Dysthymia can be temporarily alleviated by the search for symptom-relieving excitement, or the exercise of power and control. Robinson, 15. As Dr. Robinson writes, "in his bitter odyssey to never become his father, Scott set out to be a provider of high status high cost experiences not only for his mistress, but for his wife and children as well. It would be my opinion that Scott's criminal activity was motivated not only by greed, but by his effort to be the man his father never was, the man who not only provided the "good life" for his family but "rescued others" ... from the abandonment he himself experienced." Robinson, 15.

Since adolescence, Scott has been plagued by the demons left in his father's wake. He has spent his entire adult life desperately trying not to repeat the abuse inflicted by his father, and in the greatest of ironies, has in many ways become his father. Unable to recognize his own illness, Scott was driven to "rescue" those around him. He felt that he needed to be the man his father had failed to be, and to rescue those who suffered from the abandonment he himself had experienced. Robinson, 15. This pattern was initiated by his relationship with Shirley, but he would repeat it over and over, with his children, and with Cherish.

In many ways, his attempts to rescue the people closest to him were rooted not only in his fear that he would abandon them, but that they would abandon him. Paradoxically, however, he found that as he gave more and more to his family materially, they wanted more and more, and became less and less emotionally bonded with him. It is likely that his anxieties about his family's withdrawal were grounded more in his mental illness than in reality – he began to fear their rejection just as his children reached late adolescence, a time characterized by breaking family bonds and moving forward as a separate entity. Yet the trauma inflicted on Scott by his father's abandonment compounded his natural paternal separation anxiety, and he felt rejected and disillusioned. As Scott wrote in a letter to the Court, "The only time I ever came close to being happy was when I bought something for someone, usually a family member, and they were grateful for it. That made me feel happy, and alive, for a short while, over time, family members showed less and less gratitude, expected more and more, and my experiences of happiness and being alive became less and less as well. In the end, there

was no satisfaction, just guilt and the experience of being very alone.” Exhibit 4, Defendant’s Letter to the Court.

III. OFFENSES

Scott engaged in a lengthy, but deceptively simple, scheme. He was employed by Casco Bank, which was later absorbed by KeyBank, where he managed existing loans, and obtained new accounts, and he managed approximately 31 accounts. Scott applied for, and received, fraudulent loans and lines of credit in the identities of four existing customers. He drew on the loans, increasing the loans limits and obtaining additional lines of credit to make payments on the existing loans and thereby maintain the scheme. He also created fraudulent collateral for the loans.

For the majority of the relevant time period, from 1985 through 2010, Scott was a loan officer, or “relationship manager,” first at Casco Bank, and then at Key Bank when Casco Bank was absorbed. In 2010, he became a “senior relationship manager.” Throughout those years, he engaged in the same process of obtaining commercial loans. Scott submitted a “sale,” or proposed loan, to a sales manager (██████████, Portland, Maine, 1995-2000; ██████████, Cleveland, Ohio, 2002-2002; ██████████, Albany, New York, 2002-2006; ██████████, Cleveland, Ohio, 2006-2008; ██████████, Albany, New York, 2009-2012). The sales managers determined whether the proposed loan met Keybank’s “Community Development Lending” requirements.

The sales managers had direct, daily supervisory authority over Scott, and communicated with him by email and/or phone at least daily to discuss customer matters, as well as what Scott was working on at any given time. If the sales managers approved a proposed loan, the loan application was then sent to underwriting. If approved at that

stage, the loan application was forwarded to the credit department for approval by an individual with up to \$5,000,000 lending authority, [REDACTED], of Cleveland, Ohio. [REDACTED] had determinative authority over whether the loan would be made. Scott had no loan authority at any time during his employment at KeyBank. This process was also used for any increases or renewals of lines of credit ("LOC"), and Scott similarly had no discretion regarding any LOC.

Scott terminated his scheme in July of 2012 when his new boss denied an increase of the LOC of one of the accounts he managed because it was not consistent with KeyBank's community development loan purposes. Scott had no access to funds, and the accounts he used to obtain the loans and withdraw money, became delinquent. His boss became increasingly suspicious, and began applying pressure on him to put repayment plans in place or seek an exit strategy from the delinquent loans. At that point, Scott resigned his position at KeyBank.

From 2006 to 2011, Scott prepared and filed joint individual federal tax returns, as well as The Boathouse's S Corporation federal tax returns. On his individual tax returns, Scott identified his occupation as an executive, and on The Boathouse returns, he identified himself as its treasurer. Scott did not report the income he obtained from the fraudulent loans at KeyBank.

Throughout the course of the scheme, Scott obtained an average of \$400,000 a year in illegal earnings. Scott used the proceeds not only to facilitate the scheme itself, but to pay for the lifestyle he believed Shirley, Charlie, Sara, and ultimately, Cherish, required. He paid for a Disney Time Share when Charlie and Sara were young (\$30,000), bought them new cars (twenty cars between 1986 and 2012), invested in a real estate

development (\$300,000), paid for annual Hawaain vacations (\$15,000 per year for fifteen years, totaling \$225,000), and annual vacations to other parts of the world (totaling approximately \$200,000), and Shirley spent around \$2,000 a month on clothing for the family (totaling approximately \$500,000). He bought a ski condo to provide a place for the family to spend time together on weekends, as his had done when he was growing up, and bought season passes each year for twenty years (approximately \$40,000).

[REDACTED] Scott paid for private education. Charlie attended Kent's Hill School for three years (\$90,000). [REDACTED]

[REDACTED] attended Carrabasset Valley Academy to compete in skiing for three years (\$75,000). Scott spent \$90,000 on Charlie's two years of college, and \$200,000 on Sara's four years of college. He paid for Charlie's rent for sixty months (totaling approximately \$120,000). And Scott funded his family's passion for sailing. Sailing gave his family an identity. He purchased seven sailboats over 25 years (totaling approximately \$805,000), financed two Olympic sailing campaigns for his children (totaling approximately \$500,000), and paid for Sara to live in Miami pursuing a sailing career for eighteen months (totaling approximately \$27,000). Scott also funded The Boathouse, the store he and his wife owned and ran together, which sold sailboats and boating-related items. Beginning approximately ten years ago, Scott began engaging in sexual encounters with escorts. He ultimately purchased a home for Cherish.

Following his dissolution of the scheme, in August, 2012, Scott immediately terminated his employment and contact undersigned counsel. From mid-September of 2012, when undersigned contacted AUSA John Chapman on the defendant's behalf,

Scott has been clear about his desire to cooperate fully with all aspects of the investigation into his conduct. Indeed, this contact sparked the investigation. Scott then turned himself in, and initiated meetings with the FBI, Treasury and IRS agents. He then voluntarily turned over his passport, cooperated fully with the Probation Department pre-hearing, and executed a Plea Agreement including a Plea to an Information.

IV. DEFENDANT'S SENTENCING ANALYSIS PURSUANT TO 18 U.S.C.A. §
3553.

Both the Supreme Court and the First Circuit have outlined the sentencing process applicable in this case. *U.S. v. Gall*, 128 S. Ct. 586 (2007); *U.S. v. Martin*, 520 F.3d 87, 91 (1st Cir. 2008). The Court begins its analysis with the calculation of the advisory sentencing range, and considers the appropriateness of any recognized Guidelines departures. *Martin* at 91. The Court then weighs the arguments of the parties regarding the case and defendant specific facts in light of the factors put forth in 18 U.S.C. § 3553(a).

The Guidelines promulgate the bearing of the following factors on a sentencing analysis: (1) the nature and circumstances of the offense and the history and characteristics of the defendant; (2) the need for the sentence imposed – (A) to reflect the seriousness of the offense, to promote respect for the law, and to provide just punishment for the offense; (B) to afford adequate deterrence to criminal conduct; (C) to protect the public from further crimes of the defendant; and (D) to provide the defendant with needed educational or vocational training, medical care, or other correctional treatment in the most effective manner. 18 U.S.C.A. § 3553.

After a case-specific analysis of those factors, the sentencing court has broad discretion to deviate from the Guidelines, and there is great deference accorded to its decision. *Gall*, 128 S. Ct. 586 (2007); *United States v. Iannarelli*, 524 F.3d 286, 292 (1st Cir. 2008); see also *United States v. Taylor*, 523 F.3d 68; *Martin*, 520 F.3d at 98. Once the Guideline Sentencing Range has been calculated, “sentencing becomes a judgment call” for the court, and the court may construct a sentence varying from the Guideline Range “based on a complex set of factors whose interplay and precise weight cannot even be precisely described.” *Iannarelli*, 524 F.3d at 292 (quoting *Martin*, 520 F.3d at 92). “Ultimately, ‘[t]here is no single reasonable sentence in any particular case, but, rather, a universe of reasonable outcomes.’” *U.S. v. Prospero*, 686 F.3d 32, 43 (1st Cir., July 13, 2012) (quoting *United States v. Walker*, 665 F.3d 212, 234 (1st Cir. 2011)).

With regard to the first stated purpose of §3553(a), Scott’s history and characteristics not only stand on their own as mitigating factors, but directly inform the nature and circumstances of the offense. It must be clearly enunciated – everything Scott has done has been driven by his rescue complex, and by the life-long depression and anxiety that are sequelae of the abuse inflicted on his family by his father. Further, even apart from consideration under §3553(a), case law demonstrates that mental conditions may be valid grounds for departure. See also *U.S. v. Ribot*, 97 F.Supp.2d 74 (D. Mass. 1999) (holding that defendant charged with embezzlement suffered from depression that warranted downward departure); *Gapinski*, 561 F.3d 467 (3rd Cir. 2009) (arguments for a lower sentence based on alleged diminished capacity due to ADHD should be considered in sentencing determination on remand); *U.S. v. Cherry*, 314 Fed. Appx. 563 (2009) (variance sentence was appropriate, based on the defendant’s mental condition and his

acceptance of responsibility during the course of his imprisonment).

Scott's mental condition has its roots in a household characterized by domestic abuse and by his abandonment by his father at a young age, and has followed him throughout adulthood. His diagnosed disorders undoubtedly have a causal relationship with the behavior that now brings him before the Court. Scott has always desperately sought to be a hero, to be the character meant to rescue those around him from poverty and isolation. He surrounded himself with people who required that of him – his mother, his wife, his children, his mistress, and his mistress's young children. The effects of dysthymia and of his complex pathology regarding his abuse and abandonment by his father led to pathological rationalization of illegal and immoral behavior and rendered him incapable of controlling himself. Scott's feelings of unworthiness and fear of abandonment were sown in childhood, and most concretely symbolized by his own father's abandonment of the family. Robinson, 17.

The second §3553(a) factor is four-fold, and reflects the sentencing court's important duty to balance analysis of the offender and the offense with the purposes of the law. In this case, Scott has admitted to fraudulently obtaining several million dollars from KeyBank and failing to report those funds on his tax returns. Under the Guideline Range put forward by the government, Scott faces a sentence of between 108 and 135 months, or 9 and 11.25 years. Significantly, in the Eastern District of New York a former Citigroup Vice President, Gary Foster, was sentenced in 2012 to 97 months in prison. He stole \$23 million from Citigroup over a period of eight years.

This Court can reflect the seriousness of the offense, promote respect for the law, and provide just punishment with a lengthy sentence that takes into account the

mitigating factors highlighted above, and also reflects that Scott's criminal conduct does not rise to the level of, for example, the conduct of Mr. Foster, described above. Moreover, a sentence of between 87 and 108 months, undoubtedly affords adequate deterrence to criminal conduct. Such a sentence is lengthy, and furthers the sentencing purposes while recognizing the limitations of the defendant, and the nature of the crime.

A. Defendant's Placement, RDAP, and Self-Reporting Requests

The defendant asks that the Court consider the final prong of providing "the defendant with needed ... medical care, or other correctional treatment" and recommend his placement at the Federal Prison Camp in Montgomery, Alabama, which would provide him much needed access to the Residential Drug Abuse Program ("RDAP"). He further asks that he be permitted to self-port.

Scott began self-medicating with Xanax in 2010, when his primary care physician, Dr. Stephen Martin, prescribed it to help him cope with acute situational anxiety issues. Since then, Scott has continued to rely heavily on Xanax, and alcohol. Dr. Martin has expressed his concern regarding Scott's dependency on Xanax, and a letter to that effect is attached hereto as Exhibit 5. Scott requires in-depth treatment to address his drug dependency, and such a placement would provide that treatment.

V. CONCLUSION

Dr. Robinson writes that "[u]nlike psychopathic individuals who commit similar crimes to, in great measure, enhance their feelings of self-importance by tricking or fooling their victims, Scott's psychological gratification came from "rescuing" and providing for others and striving to never abandon them as he was abandoned. He is at low risk for repetition of criminal conduct. The discovery of his crimes has at one level

diminished a measure of his guilt and psychological pain. The relief of this guilt and his acceptance of responsibility, however, has in actuality exacerbated his degree of psychological pain in that he has now, as in his words, 'Become my father, the very thing I wanted to avoid.'"

Scott has sought the psychological gratification of rescuing and providing for others since his father abandoned him. The moments where he felt that he had accomplished those goals have been the only moments of respite from his chronic depression. Yet at some point even those moments were not enough, and the intimacy he so craved was not forthcoming from those he loved. Ultimately, after years of years of dissemblance, of living two lives, Scott finally addressed head-on the reality of his crimes. He had, in essence, "become his father," even as he desperately sought not to. Yet by taking full responsibility for his actions, and by serving a sentence carefully tailored to the purposes of the Sentencing Guidelines and to this case, Scott has the opportunity to redeem himself, and to contribute meaningfully to society upon his release from prison.

Dated this 20th day of June, 2014.

Respectfully submitted,

/s/ Thomas F. Hallett
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CERTIFICATE OF SERVICE

I, Thomas F. Hallett, Esq., hereby certify that I have caused the Defendant's Sentencing Memorandum be delivered by U.S. First Class Mail and Electronic Mail to:

- Halsey Frank, Halsey.Frank@usdoj.gov

Office of the U.S. Attorney
100 Middle Street
6th Floor, East Tower
Portland, ME 04101

Dated this 20th day of June, 2014, at Portland, Maine.

/s/ Thomas F. Hallett
Thomas F. Hallett, Esq.
Maine Bar No. 003142