UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF GEORGIA
SAVANNAH DIVISION

UNITED STATES OF AMERICA	)	
	)	
v.	)	**CASE NO. 4:20-CR-00081-5**
	)	
TIMOTHY TOMMY STRICKLAND,	)	
	)	
	)	
Defendant.	)	

GOVERNMENT'S SENTENCING MEMORANDUM AS TO DEFENDANT TIMOTHY STRICKLAND

COMES NOW the United States of America, by and through undersigned counsel, and submits its sentencing memorandum as to Defendant Timothy Strickland in the above-captioned matter. For the reasons outlined below, the United States respectfully submits that the Court should accept Defendant Strickland's 11(c)(1)(C) plea agreement and impose a sentence that includes a term of imprisonment of twelve months and one day, which falls within the applicable Sentencing Guidelines range of 10 to 16 months and is sufficient, but not greater than necessary, to comply with the purposes set forth in 18 U.S.C. § 3553(a)(2).

I. FACTUAL BACKGROUND

On September 2, 2020, a federal grand jury charged Defendants Evans Concrete, Timothy Strickland, James Pedrick, Gregory Melton, and David Melton with one count of conspiracy to fix prices, rig bids, and allocate markets for sales of ready-mix concrete in the Southern District of Georgia and elsewhere, in violation of the Sherman Act, 15 U.S.C. § 1. Indictment, ECF No. 1. The Indictment charges that the conspiracy began at least as early as 2010 and continued until in or about July 2016. *Id.* ¶ 2. The Indictment alleges that Defendant Strickland was, at different

times, owner, president, area manager, plant manager, and salesperson for Defendant Evans Concrete. *Id.* ¶ 11.

Additionally, Count Three of the Indictment charges Defendant Strickland with making false statements to federal law enforcement agents, in violation of 18 U.S.C. § 1001, and Count Four charges Defendant Strickland with perjury, in violation of 18 U.S.C. § 1621(1). *Id.* ¶¶ 23–28. The allegations in Counts Three and Four are based on statements made by Defendant Strickland in an October 8, 2015, interview in connection with a government investigation into the conduct alleged in the Indictment. *Id.*

On September 19, 2023, Defendant Pedrick pled guilty to Count One of the Indictment, ECF No. 383, pursuant to a plea agreement with the United States, ECF No. 384. As part of his plea agreement, Defendant Pedrick agreed to "provide full, complete, candid, and truthful cooperation in the investigation and prosecution" of this case. ECF No. 384 at 9.

On November 15, 2023, the Court held an evidentiary hearing before Magistrate Judge Epps to determine the admissibility of co-conspirator statements under Fed. R. Evid. 801(d)(2)(E). ECF No. 402. The United States admitted into evidence fifty-six exhibits and called as its witness FBI special agent Colleen Brennan, who testified for several hours and was subject to extensive cross-examination by defense counsel.

On April 2, 2024, Defendant Strickland and Defendant Evans Concrete pled guilty to Count One of the Indictment, ECF Nos. 439 (Strickland) and 441 (Evans), pursuant to plea agreements with the United States, ECF Nos. 440 (Strickland) and 442 (Evans). Specifically, Defendant Strickland and Defendant Evans Concrete admitted to fixing prices, rigging bids, and allocating

jobs for sales of ready-mix concrete in Statesboro, Georgia, beginning at least as early as 2011 and continuing at least until 2013. ECF No. 439 at 2–3.

On July 8, 2024, the trial of Defendants Greg Melton and David Melton began. ECF No. 493. During the four-day trial, the United States called five witnesses, including Defendant Pedrick, who testified pursuant to the cooperation obligations in his plea agreement. The United States also admitted into evidence seventy-two exhibits, including multiple audio recordings that referenced Defendant Strickland. On July 11, 2024, the jury convicted both Defendants Greg Melton and David Melton on Count One of the Indictment. ECF No. 501.

II. PLEA AGREEMENT AND SENTENCING GUIDELINES

The United States and Defendant Strickland entered into a plea agreement pursuant to Federal Rule of Criminal Procedure 11(c)(1)(C). ECF No. 440. Pursuant to the plea agreement, the parties agree "the appropriate sentence a) will not exceed 12 months and one day of imprisonment; and b) will require Defendant to pay to the United States a criminal fine of $150,000. . . ." *Id.* at 4.

The Presentence Investigation Report ("PSR") computes a total offense level of 12 and a criminal history category of I, resulting in a guideline imprisonment range of 10 to 16 months. ECF No. 520 at 15. The PSR further states that Defendant Strickland's guideline fine range is $69,260 to $346,301. *Id.* at 18. The United States agrees with the PSR's guideline range computations, and Defendant Strickland represented that he does not object to the PSR, ECF No. 514. Thus, the United States submits that the applicable guideline imprisonment range is 10 to 16 months, and the applicable guideline fine range is $69,260 to $346,301.

III. APPLICABLE LAW

The advisory Sentencing Guidelines promote the "basic aim" of Congress in enacting the Sentencing Reform Act, namely, "ensuring similar sentences for those who have committed similar crimes in similar ways." *United States v. Booker*, 543 U.S. 220, 252 (2005). Along with the Guidelines, the other factors set forth in Title 18, United States Code, Section 3553(a) must be considered. Section 3553(a) directs the Court to impose a sentence "sufficient, but not greater than necessary" to comply with the purposes set forth in paragraph two. 18 U.S.C. § 3553(a). That sub-paragraph sets forth the purposes as:

> (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. 3553(a)(2).

Section 3553(a) further directs the Court to consider: (1) the nature and circumstances of the offense and the history and characteristics of the defendant; (2) the statutory purposes noted above; (3) the kinds of sentences available; (4) the kinds of sentences and the sentencing range as set forth in the Sentencing Guidelines; (5) the Sentencing Commission's policy statements; (6) the need to avoid unwarranted sentencing disparities; and (7) the need to provide restitution to any victims of the offense. 18 U.S.C. § 3553(a).

IV. DISCUSSION

The United States respectfully submits that a sentence imposing a term of imprisonment is warranted in this case after applying the sentencing factors set forth in Section 3553(a) to Defendant Strickland's conduct.

A. The Seriousness of the Offense and the Need to Provide Just Punishment for the Offense

In considering the "nature and circumstances of the offense," 18 U.S.C. § 3553(a)(1), price-fixing has long been held to be *per se* unreasonable, resulting in "manifestly anticompetitive effects" which "lack . . . any redeeming virtue." *Leegin Creative Leather Prod., Inc. v. PSKS, Inc.*, 551 U.S. 877, 886 (2007) (internal quotations and citations omitted). Indeed, the Sentencing Commission has recognized that agreements among competitors in restraint of trade "can cause serious economic harm" and "are so plainly anticompetitive that they have been recognized as illegal *per se*, i.e., without any inquiry in individual cases as to their actual competitive effect." U.S.S.G. §2R1.1 cmt. background.

Defendant Strickland participated in a multi-year conspiracy to fix prices, rig bids, and allocate jobs for sales of ready-mix concrete. He was the president and owner of Evans Concrete and held ultimate authority over the company's pricing decisions. And he wielded that power to coordinate jobs and pricing with competitor companies. In weighing this sentencing factor in a similar case, the Northern District of Iowa found significant that:

> The subject of all three conspiracies, ready-mix concrete, is a necessity product, rather than a luxury or a trifle. "Concrete is used more than any other man-made material in the world." Wikipedia, *Concrete*, *available at* http://en.wikipedia.org/wiki/Concrete (last visited January 11, 2011). It is necessary for a wide array of construction projects. … one would be hard pressed to gaze in any direction in a modern city and not see an architectural structure which does not have as a component, some concrete. Moreover,

> in many instances, there will be no reasonable substitute for concrete. . . . By rigging bids on these public works projects, [the defendant] effectively robbed several local governments of monies that could have been used for the betterment of their communities.

United States v. Vandebrake, 771 F. Supp. 2d 961, 1003 (N.D. Iowa 2011).

In furtherance of the conspiracy, Defendant Strickland submitted non-competitive pricing to customers of Evans Concrete, depriving those customers of the competitive pricing they wanted and expected. Terry Varnedore, whose company purchased concrete from Evans Concrete and other companies that participated in the conspiracy, testified at the trial of Defendants Greg Melton and David Melton that it was important for his company to obtain competitive pricing because it dictated his company's profit and "bottom line." Trial Tr. 166:8–19 (July 8, 2024). Mr. Varnedore testified that even a one-dollar increase in the price of ready-mix concrete would have an impact on his company. Trial Tr. 179:1–3 (July 8, 2024). Mr. Varnedore's company was just one of many customers that purchased ready-mix concrete at non-competitive prices from the conspirator companies. This was not a victimless crime, and the sentence imposed should reflect the seriousness of the offense.

Defendant Strickland also took efforts to conceal the conspiracy. He and his co-conspirators used another co-conspirator, Jim Pedrick, an Argos cement salesman, as a conduit and messenger to exchange pricing and job-related information with other conspirators, rather than communicating with each other directly. That aspect of the scheme—the use of Pedrick as a conduit—was very much intentional and by design, as shown by evidence admitted at the trial of Defendants Greg Melton and David Melton. *See, e.g.*, GX 47 (audio recording in which Pedrick states: "I think Greg would feel easier if he talks to me rather than [Strickland] – 'cause it's illegal for them to do it."). The Court should consider Defendant Strickland's concealment efforts in its

assessment of the nature and circumstances of the offense. *See United States v. Kaufman*, 791 F.3d 86, 89 (D.C. Cir. 2015) (affirming defendant's 24-month sentence for an embezzlement scheme where the district court considered in its sentencing determination "the efforts that were taken to conceal the crime").

What is more, Defendant Strickland lied—under oath—to investigators in 2018, thus thwarting the government's efforts to uncover his wrongdoing. For example, Defendant Strickland testified under oath that he never discussed with Greg Melton concrete pricing or specific jobs in Statesboro. This statement was demonstrably false, as proven by Defendant Strickland's admissions in his plea agreement and the evidence admitted at the trial of Defendants Greg Melton and David Melton. *See, e.g.*, GX 15 (audio recording in which Greg Melton states: "But I did tell [Strickland] that – hey, look, either two things had to happen: their price needed to come up or mine's coming down. [Strickland] said, 'No, don't do that. Mine'll come up.'").

The Court should consider Defendant Strickland's dishonesty and obstruction in imposing a sentence. *See United States v. Campanale*, 665 F. App'x 798, 801 (11th Cir. 2016) (approving district court's consideration of defendant's obstructive conduct for both enhancement purposes and in determining the extent of the downward variance); *United States v. Vogler*, 763 F. App'x 18, 19–20 (2d Cir. 2019) (approving district court's consideration of defendant's obstruction of investigation under Section 3553(a) and consequent imposition of higher sentence); *United States v. Butters*, 588 F. App'x 12, 13 (2d Cir. 2014) (approving district court's consideration of defendant's false statements to law enforcement officials as evidence of his dishonesty which the district court viewed as discounting his after-the-fact statements of remorse). Justice requires that Defendant Strickland's conduct be punished with a term of imprisonment.

B. The Need to Promote Respect for the Law and Afford Adequate Deterrence

The importance of maintaining competition and protecting consumers from economic crimes such as price fixing also supports an appropriate prison term in this case. Antitrust conspiracies are difficult to detect, and the harm they cause to consumers and businesses is pernicious. The harmful impact warrants a sentence of imprisonment to deter others from engaging in similar conduct.

The Eleventh Circuit has recognized the particular importance of general deterrence among the sentencing factors to be applied in the case of white-collar criminals, a factor applicable in the case of antitrust offenders like the defendant. *See United States v. Martin*, 455 F.3d 1227, 1240 (11th Cir. 2006) (discussing the legislative history of 18 U.S.C. § 3553 and noting that "Congress viewed deterrence as 'particularly important in the area of white collar crime'" (quoting S. Rep. No. 98-225 at 76 (1983))). The Eleventh Circuit further stated:

> Because economic and fraud-based crimes are "more rational, cool, and calculated than sudden crimes of passion or opportunity," these crimes are "prime candidate[s] for general deterrence." Stephanos Bibas, *White–Collar Plea Bargaining and Sentencing After* Booker, 47 Wm. & Mary L.Rev. 721, 724 (2005). Defendants in white collar crimes often calculate the financial gain and risk of loss, and white collar crime therefore can be affected and reduced with serious punishment.

Id. (citations omitted); *see also United States v. Livesay*, 587 F.3d 1274, 1279 (11th Cir. 2009) ("It is difficult to imagine a would-be white-collar criminal being deterred from stealing millions of dollars from his company by the threat of a purely probationary sentence."). These same considerations apply with equal force to antitrust defendants. *See generally Vandebrake*, 771 F. Supp. 2d 961, 991–1013 (discussing the importance of strong sentences for Sherman Act violations).

Imposing a sentence of imprisonment is sufficient, but not greater than necessary, to promote respect for the law and to deter others from engaging in similar conduct. Business executives and employees who contemplate fixing prices or rigging bids with their competitors will receive the message that such anti-competitive conduct risks incarceration, not merely imposition of a fine that may be considered the cost of doing business.

C. The Sentencing Commission's Policy Statements

The Sentencing Commission's policy statements and commentary make clear its intention that courts impose sentences of imprisonment for criminal antitrust defendants. Specifically, the Commentary to §2R1.1 states: "It is the intent of the Commission that alternatives such as community confinement not be used to avoid imprisonment of antitrust offenders." U.S.S.G. §2R1.1 cmt. n.5. The Background commentary further states:

> Under the guidelines, prison terms for [antitrust] offenders should be much more common, and usually somewhat longer, than typical under pre-guidelines practice. Absent adjustments, the guidelines require some period of confinement in the great majority of cases that are prosecuted, including all bid-rigging cases. The court will have the discretion to impose considerably longer sentences within the guideline ranges. Adjustments from Chapter Three, Part E (Acceptance of Responsibility) and, in rare instances, Chapter Three, Part B (Role in the Offense), may decrease these minimum sentences; nonetheless, in very few cases will the guidelines not require that some confinement be imposed.

U.S.S.G. §2R1.1 cmt. background.

"The Sentencing Commission has further explained that terms of imprisonment are ordinarily necessary for antitrust violations because they 'reflect the serious nature of and the difficulty of detecting such violations.'" *Vandebrake*, 771 F. Supp. 2d at 1009 (quoting

Amendments to the Sentencing Guidelines for United States Courts, 56 Fed. Reg. 22,762, 22,775 (May 16, 1991)).

Courts have recognized and applied these Sentencing Commission policies at sentencing in criminal antitrust cases. *See, e.g.*, *United States v. Rattoballi*, 452 F.3d 127, 135 (2d Cir. 2006) ("The Guidelines reflect a considered determination by the Commission that jail terms are the most effective deterrent for antitrust violations.") (citing U.S.S.G. §2R1.1 cmt. background) (reversing non-incarceration sentence for Sherman Act conviction); *United States v. Haversat*, 22 F.3d 790, 797 (8th Cir. 1994) ("The Sentencing Commission has emphasized that the sentencing court should impose some confinement in all but the rarest criminal antitrust cases.") (citing U.S.S.G. §2R1.1 cmt. background); *Vandebrake*, 771 F. Supp. 2d at 1009 (taking into account "the Sentencing Commission's view 'that alternatives such as community confinement not be used to avoid imprisonment of antitrust offenders" in deciding to vary upwards in sentencing a defendant to prison for an antitrust offense in the ready-mix concrete industry).

Here, too, the Court should consider the Sentencing Commission's policy statements regarding the sentencing of antitrust defendants, which further support a sentence of imprisonment imposed on Defendant Strickland.

V. CONCLUSION

For the foregoing reasons, the United States respectfully submits that the Court should impose on Defendant Strickland a sentence that includes a term of imprisonment of twelve months and one day.

Respectfully submitted,

/s/ Patrick Brown
Patrick S. Brown
Julia M. Maloney
Trial Attorneys
U.S. Department of Justice, Antitrust Division
Washington Criminal II Section
450 Fifth Street NW
Washington, DC 20530
Tel: (202) 374-0178
Email: patrick.brown2@usdoj.gov

/s/ Greg Gilluly
E. Gregory Gilluly, Jr.
Assistant U.S. Attorney
U.S. Attorney's Office
Southern District of Georgia
22 Barnard Street, Suite 300
Savannah, Georgia 31401
Tel: (912) 652-4422
Email: greg.gilluly@usdoj.gov

CERTIFICATE OF SERVICE

This is to certify that I have on this day served all counsel of record in this case in accordance with the notice of electronic filing which was generated as a result of electronic filing in this Court.

Submitted this 23rd day of August, 2024.

/s/ Patrick Brown
Patrick Brown
Trial Attorney
U.S. Department of Justice, Antitrust Division
Washington Criminal II Section
450 Fifth Street NW
Washington, DC 20530
Tel: (202) 374-0178
Email: patrick.brown2@usdoj.gov