IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Alexandria Division

UNITED STATES OF AMERICA,	)	
	)	
v.	)	**No. 08-CR-437**
	)	
PRESTON PINKETT, II	)	**The Honorable James C. Cacheris**
	)	
	)	**Sentencing Date: Sep. 11, 2009**
Defendant.	)	

DEFENDANT'S POSITION ON SENTENCING

Pursuant to Title 18 U.S.C. § 3553(a), Federal Rule of Criminal Procedure 32, and Section 6A1.3 of the *United States Sentencing Guidelines*, the Defendant, Preston Pinkett ("Mr. Pinkett"), by and through his attorney, Geremy C. Kamens, hereby notifies the Court that he has received and reviewed the Presentence Report ("PSR") prepared in this case.

The parties agree with the calculation of the advisory sentencing guidelines contained in the PSR. Under the circumstances of this case, however, and in light of the government's Motion filed pursuant to § 5K1.1, we respectfully request that the Court impose a sentence of twenty-four (24) months of incarceration as sufficient to accomplish the purposes of sentencing.

Mr. Pinkett is 70 years old, and has devoted his life to legitimate business ventures and business consulting. He also suffers from several serious health problems, including diabetes, kidney stones, unregulated high blood pressure posing a significant risk of stroke, as well as a weakened heart condition known as dilated cardiomyopathy.

With respect to the underlying fraud, Mr. Pinkett was not the mastermind of the scheme, had no personal contact with individual investors, and was led into this offense by a Canadian, Malcolm Stevenson, who, unbeknownst to Pinkett, had been repeatedly sanctioned by the British Colombia

Securities Commission. Mr. Pinkett's motivation in this case was not to live a lavish lifestyle, but rather to develop successful investment projects in Africa that would ultimately return a substantial profit.

Nonetheless, he has fully accepted responsibility in this case and done everything that he could to make amends for his conduct. For these reasons, we believe a sentence of 24 months of incarceration would fully accomplish the purposes of sentencing and constitute a just sentence in this case.

I. Application of Sentencing Factors Under 18 U.S.C. § 3553(a)

The Court is well aware that the Supreme Court's opinions in *Kimbrough v. United States*, 128 S. Ct. 558 (2007), and *Gall v. United States*, 128 S. Ct. 586 (2007), have dramatically altered the law of federal sentencing. While courts must continue to consider the sentencing guidelines, Congress has required federal courts to impose the least amount of imprisonment necessary to accomplish the purposes of sentencing as set forth in paragraph 2 of § 3553(a) of Title 18. Those factors include (a) the nature and circumstances of the offense and the history and characteristics of the defendant, (b) the kinds of sentences available, (c) the guideline range, (d) the need to avoid unwarranted sentencing disparities, (e) the need for restitution, and (f) the need for the sentence to reflect the following: the seriousness of the offense, promotion of respect for the law and just punishment for the offense, provision of adequate deterrence, protection of the public from future crimes and providing the defendant with needed educational or vocational training, medical care, or other correctional treatment. *See* 18 U.S.C. § 3553(a).

The overriding principle and basic mandate of Section 3553(a) requires district courts to impose a sentence "*sufficient, but not greater than necessary,*" to comply with the four purposes of sentencing set forth in Section 3553(a)(2): retribution (to reflect the seriousness of the offense, to promote respect for the law, and to provide "just punishment"), deterrence, incapacitation ("to protect the public from further crimes"), and rehabilitation ("to provide the defendant with needed educational or vocational training, medical care, or other correctional treatment in the most effective manner"). The sufficient-but-not-greater-than-necessary requirement is often referred to as the "parsimony provision." This requirement is not just another factor to be considered along with the others set forth in Section 3553(a) — it sets an independent limit on the sentence.

A. Mr. Pinkett's History and Characteristics

i. Personal Background

Mr. Pinkett was born April 11, 1939, in Salisbury, Maryland, to his mother, Mary B. Pinkett (now 96 years old and suffering from dementia), and father, Preston Pinkett, who has been deceased for two decades. Mr. Pinkett grew up in Salisbury with his younger brother Maurice Pinkett. Mr. Pinkett's mother worked as a school teacher, and his father worked at a local bank.

After graduating from high school, Mr. Pinkett attended Morgan State University for four years. He left school three credits shy of completing his degree when he married his first wife, Patricia Press, a school teacher. They remained married for 37 years before divorcing. He fathered two boys from the marriage, Preston Pinkett, III, who lives in New Jersey and Brian Pinkett, who lives in California and works as an architect. Preston Pinkett, III, works for Prudential Insurance Company. Both of Mr. Pinkett's sons graduated from Cornell.

Approximately six years ago, Mr. Pinkett married his current wife, a woman originally from South Africa. They have no children, and Mrs. Pinkett is not employed outside the home. They rent a modest two-bedroom townhouse in Arlington, Virginia, and live on income that Mr. Pinkett receives as a business consultant. Although the PSR suggests that Mr. Pinkett has ample funds in a bank account, PSR ¶ 75, all such funds are frozen and inaccessible.

In 1969, Pinkett founded a business consulting firm with two other business partners called Pinkett, Brown, & Black Associates. The firm provided marketing research for fortune 500 companies. Thereafter he worked as an independent business consultant and traveled widely, particularly to Cameroon, Liberia, and Ghana, to provide advice with respect to the structuring of business plans. As a result of this case, however, he has surrendered his passport.

According to Mr. Pinkett's son, Preston Pinkett, III, Mr. Pinkett was a devoted father who taught his children the importance of community service. He relates that when Mr. Pinkett was not traveling for business, he was dedicated to spending time with the family and would discuss current events and the importance of service at the dinner table. He also says that Mr. Pinkett was generous to those in need, and at various times asked the family to make room in their home for people who needed a place to stay. He also recalls that his father worked with a group in D.C. to build affordable housing, and that he was always focused on improving the lives of various communities in Africa.

ii. Mr. Pinkett's Health

Mr. Pinkett suffers from a variety of significant health problems. *See* Documents Submitted Separately Under Seal. Specifically, he has high blood pressure and related dilated cardiomyopathy, a condition in which the heart is weakened and cannot pump blood efficiently. His high blood pressure has already caused some degree of irreparable damage to his kidneys, a symptom that is compounded by diabetes which requires medical intervention. According to his primary care physician, Mr. Pinkett has a heightened risk of stroke over the next two to five years. Mr. Pinkett also suffers from painful kidney stones.

Mr. Pinkett requires an aggressive treatment for his high blood pressure, and will require access to emergency health care to address side effects from necessary diabetes medication.

B. The Nature of the Offense

The essence of the underlying offense is simple. Malcolm Stevenson and others located in Canada represented that in return for depositing money into a segregated account that would remain accessible to the depositor, investors would receive as much as 6% of their principal investment in return on a monthly basis. According to Stevenson's representations, the money would be used to purchase high yield corporate bonds that would mature over a medium term. In fact, the money was not accessible, the promised returns were impossible to achieve, and the money was never used as collateral to purchase high yield corporate bonds. Instead, money from new investors was simply shifted to older investors in a familiar Ponzi cycle.

Mr. Pinkett was in control of the IFC (International Fiduciary Corp.) accounts used in the scheme, but he did not found the company with the intention of defrauding investors. Mr. Pinkett founded IFC as a business consulting company before he ever met Mr. Stevenson to seek out legitimate business opportunities.

Moreover, even though Mr. Pinkett was fully aware that principal from new investors, rather than investment profit, was being returned to other investors, he never stopped seeking out legitimate projects in which to place the investors' money. In other words, this was not a scheme in which Mr. Pinkett simply accepted funds without ever attempting to find lawful investment opportunities.

Moreover, Mr. Pinkett used funds he received to pay salaries to IFC employees and other expenses. He also had an accountant keep meticulous records of IFC's disbursements, records that made it very easy for the Securities and Exchange Commission to see how IFC's investor funds were distributed. This is not a case, in other words, in which any sophisticated measures were taken to obscure the discovery of the offense.

Mr. Pinkett, for all of his experience as a business consultant, was also taken in by the prospect of obtaining enormous returns through the use of high-yield notes. His gullibility, along with his life-long commitment to business projects in Africa, fueled his belief that it was only a matter of time before IFC would receive investment returns that would far exceed investment principal. Of course, that hope was never fulfilled.

C. The Kinds of Sentences Available

No mandatory minimum sentence exists in this case.

D. The Need to Promote Respect for the Law, Provide Just Punishment, Protect the Community and Provide Adequate Deterrence, and Provide Restitution

Mr. Pinkett is 70 years old and thus poses almost no real risk of recidivism or danger to the community. As the Sentencing Commission has recognized, "[r]ecidivism rates decline relatively consistently as age increases." *See Measuring Recidivism: The Criminal History Computation of the Federal Sentencing Guidelines,* United States Sentencing Commission, May 2004, at 12. According to empirical evidence gathered by the Sentencing Commission, given Mr. Pinkett's age and criminal history, his likelihood of recidivism is 6.2%, the lowest risk of recidivism found among any age cohort. *Id.* at Exh. 9. Accordingly, Mr. Pinkett does not present a risk of re-offending in the future.

In addition, the enforcement measures taken by the SEC have largely accomplished many of the purposes of sentencing, including appointing a receiver to liquidate assets and return funds to investors, freezing accounts and publicly announcing sanctions against Mr. Pinkett, and protecting the community against similar schemes. Civil enforcement in this case therefore works alongside the criminal process to promote respect for the law and general deterrence.

Given that Mr. Pinkett has lost almost everything that he values, and faces the prospect of a significant period of incarceration, a sentence of 24 months of incarceration would be sufficient to promote respect for the law, protect the community, and adequately deter other persons who might consider engaging in similar misconduct. We therefore respectfully request that the Court impose such a sentence in this case.

CONCLUSION

A just and appropriate sentence in this case would be 24 months of imprisonment followed by 36 months of supervised release. Mr. Pinkett respectfully asks that he be allowed to self surrender, and that he should be designated to a facility as close as possible to the Washington metropolitan area as possible.

Respectfully Submitted,

Preston Pinkett, II
By Counsel,

MICHAEL S. NACHMANOFF
Federal Public Defender

September 4, 2009

By: /s/

Geremy C. Kamens, Esq.
Va. Bar No. 41596
Attorney for Mr. Pinkett
Assistant Federal Public Defender
Eastern District of Virginia
1650 King Street, Suite 500
Alexandria, VA 22314
Telephone: 703-600-0828
Facsimile: 703-600-0880
Geremy_Kamens@fd.org

CERTIFICATE OF SERVICE

I hereby certify that on September 4, 2009, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system, which will send a notification of such filing to the following:

Tim Belevitz, Esq.
Assistant United States Attorney
2100 Jamieson Avenue
Alexandria, Virginia 22314

/s/

Geremy C. Kamens, Esquire
Va. Bar No. 41596
Attorney for Mr. Pinkett
Assistant Federal Public Defender
Eastern District of Virginia
1650 King Street, Suite 500
Alexandria, VA 22314
Telephone: 703-600-0848
Facsimile: 703-600-0880
Geremy_Kamens@fd.org