

STATE OF MINNESOTA

FILED

DISTRICT COURT

COUNTY OF HENNEPIN 2009 AUG 13 AM 11:53

FOURTH JUDICIAL DISTRICT

State of Minnesota,

BY _____ DEPUTY
HENN CO. DISTRICT
COURT ADMINISTRATOR

Court File No. 27 CR 07-124185

Plaintiff,

**SENTENCING ORDER
AND MEMORANDUM**

v.

Larry Darnell Maxwell,

Defendant.

The above-entitled matter came duly on for a sentencing hearing before the Honorable Regina M. Chu, Judge of District Court, on August 13, 2009, following a jury verdict of guilty on all 18 counts charged in the Amended Complaint. Based upon the argument of counsel, and all of the files, records and proceedings herein, the Court being duly advised,

IT IS HEREBY ORDERED:

1. Count 1 of the Amended Complaint shall be ranked as a severity level X offense.
2. Defendant is committed to the custody of the Commissioner of Corrections for a period of 198 months. Credit shall be given for 113 days already served.
3. Defendant shall provide a DNA sample.
4. Defendant shall pay full restitution to John Foster, the victim of identity theft, in an amount to be determined by Court Services.
5. Defendant shall pay full restitution to the lender victims, their successors in interest, or any other party with a present subrogation interest in the \$2,069,175.00 principal

amount of the loans at issue (not including interest, late fees, or any other additions to principal), minus payments received.

6. Defendant shall pay a fine of \$500,000.00. Pursuant to Minn. Stat. § 609.904, subd. 4, the fines collected shall be applied “to the costs and expenses of investigation and prosecution, including costs of resources and personnel incurred in investigation and prosecution and the balance, if any, as provided under section 574.34.”

Dated: August 13, 2009

BY THE COURT:

A handwritten signature in black ink, appearing to read 'Regina M. Chu', written over a horizontal line.

Regina M. Chu
Judge of District Court

INTRODUCTION

Racketeering is the most serious of all economic crimes. A racketeering conviction should result in a sentence considerably more severe than that applicable to the underlying predicate crimes – and rightly so.

In this mortgage fraud case, Larry Maxwell used his control of a real estate agency and mortgage broker firm to orchestrate an elaborate pattern of criminal activity involving not only false documents, but fake and stolen identities. He defrauded mortgage lenders of millions of dollars. But his victims were not only mortgage lenders. An innocent person's credit was ruined, with devastating consequences to him and his family. What is more, the inevitable foreclosures of the properties at issue had a significant adverse impact on an already troubled neighborhood. For this, Maxwell deserves to go to prison for 198 months.

ANALYSIS

On April 22, 2009, a jury found Defendant Larry Darnell Maxwell guilty of 18 criminal counts arising from a series of fraudulent mortgage transactions. The jury convicted Defendant of one count of racketeering, two counts of identity theft, nine counts of theft by swindle over \$35,000, and six counts of aggravated forgery. The most serious of these offenses, racketeering, is unranked for purposes of determining the presumptive sentence under the Minnesota Sentencing Guidelines. When an offense is unranked, “judges assign them to what they determine to be appropriate

severity levels.” Minnesota Sentencing Guidelines Commission, MSGC Data Report on the Frequency and Severity of Unrank Offenses (2008).

The trial court has broad discretion in assigning a severity level to an offense. *State v. Huynh*, 519 N.W.2d 191, 198 (Minn. 1994). In weighing the appropriate ranking, the trial court is to consider the following four non-exclusive factors: (1) the gravity of the defendant’s conduct; (2) the severity level of a ranked offense having similar elements; (3) the conduct and severity level assigned to other defendants convicted of the same unranked offense; and (4) the severity level assigned to other defendants who have engaged in similar conduct. *State v. Kenard*, 606 N.W.2d 440, 443 (Minn. 2000) (citing Minn. Sent. Guidelines II.A.04). These factors are designed to further the policy goals underlying the sentencing guidelines; namely, to “assure uniformity, proportionality, rationality, and predictability in sentencing.” *State v. Jones*, 745 N.W.2d 845, 848 (Minn. 2008) (citing *State v. Misquadace*, 644 N.W.2d 65, 68 (Minn. 2002)). The Court will now apply the four factors.

I. Gravity of the Defendant’s Conduct

The first factor is the gravity of the defendant’s specific conduct. This requires consideration of the “conduct underlying proof of the elements of the offense.” *State v. Kenard*, 606 N.W.2d 440, 443 n.3 (Minn. 2000). Racketeering involves the corruption of legitimate businesses in the commission of predicate crimes as part of a pattern of criminal activity. The threat to the public economic order associated with racketeering is particularly disturbing because incident to the crime, businesses and

other persons extend credit or engage in transactions that appear to be bona fide but are actually fraudulent. The utilization of apparently legitimate enterprises further makes detection more difficult and future crimes more easily executed. Racketeering also involves a pattern of criminal activity; the crime is, therefore, considerably more serious than the underlying individual predicate offenses.

Defendant's conduct manifested a high level of sophistication and extensive planning; using his control over a real estate agency and mortgage broker, he coordinated a complex interplay of other real estate agents, title companies, closers, lenders and others to carry out his fraudulent schemes. Defendant's pattern of criminal activity went beyond manufacturing fake documents such as w-2s, social security cards, mortgage applications, contractor's bills and rental agreements – his criminal acts extended to false persona and the theft of an innocent person's identity. Moreover, to accomplish future crimes, Defendant used his ill-gotten gains to fund the enterprises and other purchases of real estate.

As a result of Defendant's identity theft, the victim and his family have experienced financial devastation. In addition, significant economic and societal harm has resulted to mortgage lenders and the residents of the impacted neighborhood. *See* Stanely I. Foodman, *Predatory Lending and Mortgage Fraud*, 126 *Banking L.J.* 254, 266 (2009) (noting the considerable consequences arising from mortgage fraud). The scope of Defendant's activities, coupled with the substantial consequences arising

from his crimes, compel a high severity ranking for Defendant's racketeering conviction.

II. The Severity Level Assigned to Ranked Offenses with Similar Elements

The second factor is the severity level assigned to ranked offenses with similar elements. Racketeering is unique among criminal offenses in Minnesota in that it is the sum of a series of predicate acts constituting a pattern of criminal activity and participation in enterprises for illegitimate ends. The conduct giving rise to a racketeering conviction is wide-ranging, which makes identification of ranked offenses with similar elements difficult. As a result, this second factor has little bearing upon the appropriate ranking of Defendant's racketeering crimes.

III. Severity Level Assigned in Other Cases for the Same Unranked Offense

The third factor is the severity level assigned in other cases for the same unranked offense. Between 1981 and 2007, Minnesota courts imposed a sentence for racketeering 45 times. Minnesota Sentencing Guidelines Commission, MSGC Data Report on the Frequency and Severity of Unrank Offenses (2008). Of those cases, courts ranked the offense as follows: (a) severity level II a total of 2 times; (b) severity level IV a total of 2 times; (c) severity level V a total of 2 times; (d) severity level VI a total of 18 times; (e) severity level VII a total of 1 time; (f) severity level VIII a total of 9 times; (g) severity level IX a total of 9 times; and (h) severity level X a total of 2 times. *Id.*

These figures illustrate that racketeering is generally assigned a severity level VI or higher, with 18 cases being ranked at severity level VIII or IX. While useful, these figures do not conclusively indicate the appropriate ranking of Defendant's racketeering offense. Racketeering involves a wide range of conduct. Depending upon the specific conduct and predicate offenses involved in a case, racketeering may appropriately be ranked at any number of severity levels. Thus, while illustrative, the ranking of other racketeering offenses provides only limited guidance in determining the severity level of Defendant's racketeering offense.

IV. The Severity Level Assigned to Other Offenders Engaged in Similar Conduct

The fourth factor is the severity level assigned to other offenders engaged in similar conduct. I am unaware of any published Minnesota state cases involving conduct similar to that engaged in by Defendant. However, the ranking of the predicate crimes underlying Defendant's racketeering activities provides some direction in the racketeering ranking determination. Of course, commission of a single predicate act manifests significantly less culpability and justifies a less severe disposition than one who engages in a pattern of predicate criminal acts. Thus, while the severity level of the predicate acts provides some insight on how to rank Defendant's racketeering conviction, the ultimate ranking of the racketeering offense unquestionably should be higher than the ranking of the predicate offenses.

In this case, the predicate crimes are identity theft, aggravated forgery, and theft by swindle over \$35,000. Identity theft is ranked at severity level VIII. The high

ranking associated with this crime derives in part from the harm caused to third parties who are robbed of their identities and left with ruined credit. Given the severity level VIII ranking of identity theft, it follows that the racketeering conviction based in part upon identity theft should be ranked at severity level IX or above. The remaining predicate offenses are ranked at severity level II and VI. These offenses were part of a pattern of criminal conduct that included severity level VIII offenses, which suggests that a high severity level ranking is appropriate. The scope of Defendant's crimes, and the fact that a key element of the crimes involved severity level VIII offenses, dictate that the racketeering count here should receive a severity level ranking even beyond level IX.

V. Application of Kenard Factors

Taking the *Kenard* factors as a whole, it is appropriate to rank Defendant's racketeering offense at a severity level X. As for counts 2-18, the Court will not impose a sentence. These offenses are encompassed within the racketeering conviction. To obtain the guilty verdicts on the racketeering count, the State had to show that Defendant participated in a pattern of criminal activity. The pattern of criminal activity included the conduct charged in counts 2 – 18. For this reason, the Court will not impose a sentence on these counts, but will retain jurisdiction over these counts if the racketeering conviction is ever vacated. *See State v. LaTourelle*, 343 N.W.2d 277, 284 (Minn. 1984) ("If the adjudicated conviction is later vacated for a reason not relevant to the remaining unadjudicated conviction(s), one of the

remaining unadjudicated convictions can then be formally adjudicated and sentence imposed with credit . . . given for time already served on the vacated sentence.”).

With the severity level X ranking for racketeering, Defendant’s presumptive sentencing range is 141 – 198 months. The jury found that Defendant’s racketeering conviction was a major economic offense – an aggravating factor. While this finding would allow for an upward departure, I believe a sentence at the top of the sentencing range is appropriate. Defendant is therefore committed to the custody of the Commissioner of Corrections for a period of 198 months. Given the gravity of Defendant’s conduct and his total lack of remorse, this sentence is reasonable and consistent with the interests of justice.

RMC