

14-190

To Be Argued By:

LIAM BRENNAN

United States Court of Appeals

FOR THE SECOND CIRCUIT

Docket No. 14-190

UNITED STATES OF AMERICA,

Appellee,

-vs-

RICHARD PINTO,

Defendant

PETER PINTO,

Defendant-Appellant

ON APPEAL FROM THE UNITED STATES DISTRICT
COURT FOR THE DISTRICT OF CONNECTICUT

BRIEF FOR THE UNITED STATES OF AMERICA

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Statement of Jurisdiction

The United States District Court for the District of Connecticut (Stefan R. Underhill, J.) had subject matter jurisdiction over this federal criminal prosecution under 18 U.S.C. § 3231. Judgment entered on January 7, 2014. Defendant's Appendix ("DA") 9. On January 20, 2014, the defendant filed a timely notice of appeal pursuant to Fed. R. App. P. 4(b). DA 10, DA 131. This Court has appellate jurisdiction pursuant to 28 U.S.C. § 1291 and 18 U.S.C. § 3742(a).

**Statement of Issue
Presented for Review**

Whether the below Guidelines sentence of 48 months' imprisonment was substantively unreasonable considering the seriousness of the offense—over \$12 million in losses caused by the defendant—and a stipulated Guidelines range of 87 to 108 months.

United States Court of Appeals

FOR THE SECOND CIRCUIT

Docket No. 14-190

UNITED STATES OF AMERICA,

Appellee,

-vs-

RICHARD PINTO,

Defendant

PETER PINTO,

Defendant-Appellant.

ON APPEAL FROM THE UNITED STATES DISTRICT
COURT FOR THE DISTRICT OF CONNECTICUT

BRIEF FOR THE UNITED STATES OF AMERICA

Preliminary Statement

The defendant, Peter Pinto, pleaded guilty to one count of conspiracy to commit wire fraud, bank fraud and money laundering, and one count of wire fraud in connection with a massive four-year scheme to defraud clients, a bank and

investors. The total losses caused by the scheme were more than \$12 million. Pinto was sentenced principally to 48 months' imprisonment.

On appeal, Pinto argues that the district court committed substantive error in imposing the 48-month sentence, despite the fact that it was 39 months, or 45%, below, the bottom of the stipulated Guidelines range.

On the record below, the 48-month sentence was reasonable. It reflected a careful balancing of the 18 U.S.C. § 3553(a) factors, including the serious nature of the offense conduct and Pinto's background and personal characteristics. The district court's judgment should be affirmed.

Statement of the Case

On May 11, 2012, Pinto pleaded guilty to a two-count Information charging him with conspiracy to commit wire fraud, bank fraud and money laundering, in violation of Title 18, United States Code Section 371, and one count of wire fraud, in violation of Title 18, United States Code Section 1343. DA 5, DA 11.

On December 19, 2013, the district court (Stefan R. Underhill, J.) sentenced the defendant to 48 months' imprisonment, 5 years' supervised release, and a \$200 special assessment. DA 9, DA 127. Judgment entered January 7, 2014, DA 9, and Pinto filed a notice of appeal on January 20, 2014, DA 10, DA 131.

Pinto is currently serving the sentence imposed by the district court.

**Statement of Facts and Proceedings
Relevant to this Appeal**

A. The offense conduct

The following description of the conduct underlying Pinto's conviction is drawn from the Pre-Sentence Report ("PSR"), which the district court expressly adopted. DA 96. These facts are not disputed on appeal.

Client and consumer fraud: From 2007 through March 2011, Pinto was President and Chief Executive Officer of Oxford Collection Agency, Inc. ("Oxford"), a debt collection agency. PSR ¶ 7. Businesses and other entities contracted with Oxford to collect debts owed them by consumers. PSR ¶ 8. Oxford was supposed to collect the debts from consumers, report all such collections and remit the collected payments back to the contracting party. PSR ¶ 8. In some instances, the contracting party would then pay Oxford a percentage of the funds collected; in other instances, the contracting party would allow Oxford to subtract its commission before remitting payment. PSR ¶ 8. Oxford collected debts nationwide. PSR ¶ 8. Its clients included, among others, an educational institution, a laboratory, a computer company, and various banks. PSR ¶ 8. Oxford collected debts from consumers under the pretense that it would report

all such collections to its clients and remit the appropriate amount to the client. PSR ¶ 8.

As part of their scheme, Pinto and his co-conspirators routinely caused Oxford to collect debts that it never remitted to Oxford's clients. PSR ¶ 9. The conspirators referred to these unremitted collections as a client's "backlog." PSR ¶ 9. To hide the backlog, Pinto and his co-conspirators would make periodic fraudulent collection reports to certain clients that underreported the amount of funds collected. PSR ¶ 9. Pinto and his co-conspirators would also transfer money—from one client trust account to another client account, from Oxford's operating account to a client account, or from a client account to Oxford's operating accounts—to cover various shortfalls and backlogs or to improperly use collections to directly fund Oxford's operations. PSR ¶ 9. At least 36 client-victims sustained losses of over \$6 million when Oxford collected debts on their behalf and did not properly remit payment to them. PSR ¶ 9.

Bank fraud: In 2007, Pinto and his co-conspirators caused Oxford to apply for a line of credit from Webster Bank, an FDIC-insured bank based in Connecticut. PSR ¶ 10. Oxford used the line of credit to finance its operations, without ever disclosing to Webster Bank (1) that Oxford was defrauding its clients and consumers, or (2) that it had significant outstanding payroll taxes. PSR ¶ 10. In subsequent years,

Pinto and his co-conspirators helped maintain and increase the line of credit with Webster Bank until that line of credit ultimately reached \$6,000,000. PSR ¶ 10. To do so, he and other conspirators met with Webster Bank employees in Connecticut and elsewhere to discuss Oxford's business, without ever disclosing to the Webster Bank employees Oxford's true financial state. PSR ¶ 10. Moreover, Pinto and others sent Webster Bank falsified financial records used to induce Webster Bank to maintain and increase Oxford's line of credit with the bank. PSR ¶ 10.

Investor fraud: Beginning in approximately December 2007, Pinto and his co-conspirators began to market Oxford as a potential investment to investors through false and fraudulent representations and omissions. PSR ¶ 11. Pinto and his co-conspirators never disclosed to those investors the significant backlogs and outstanding payroll taxes that Oxford had incurred. PSR ¶ 11. Additionally, Pinto and his co-conspirators misrepresented what the funds would be used for and never informed certain investors that they intended to transfer some of the funds to a co-conspirator's personal bank account. PSR ¶ 11. Four individual investors lost a total of \$2,921,000 as a result of the co-conspirators' actions. PSR ¶ 11.

Money laundering: Finally, Pinto and his co-conspirators used some of the funds that they had fraudulently obtained to fund their other

criminal endeavors. PSR ¶ 12. Specifically, Pinto and his co-conspirators caused Oxford to periodically draw down on its line of credit from Webster Bank into Oxford's operating account. PSR ¶ 12. Pinto and his co-conspirators would then transfer the bank funds from the operating account to a client trust account and include the funds in part of a remittance to one of Oxford's clients. PSR ¶ 12. They made such transfers to maintain the client's business and thereby continue their scheme against the client. PSR ¶ 12.

All total, the losses suffered by clients, Webster Bank, and the four investors were in excess of \$12 million. PSR ¶ 13.

B. The guilty plea

On May 11, 2012, Pinto pleaded guilty to a two-count Information charging him with conspiracy to commit wire fraud, bank fraud and money laundering, and one count of wire fraud. DA 4-5, DA 11. Pinto entered his plea pursuant to a plea agreement. DA 24. In that agreement, the parties stipulated that the base offense level was 7, which was increased by 20 levels because the loss attributable to Pinto was more than \$7 million but less than \$20 million. DA 27. The parties agreed that a two-level enhancement was appropriate because there were more than 10 victims and that a three-level enhancement was appropriate because Pinto was a manager and the criminal activity involved five or more par-

ticipants. DA 27. With a three-level reduction for acceptance of responsibility, the total offense level was 29. DA 27. The parties stipulated that the defendant fell into Criminal History I. DA 27. Based on these calculations, the defendant fell into a Guidelines range of 87-108 months' imprisonment. DA 28.

Shortly after the guilty plea proceeding, on June 20, 2012, Pinto's bond was revoked because he inappropriately contacted a witness in this case. PSR ¶¶ 5, 85. He has remained in custody since that date. PSR ¶ 5.

C. The sentencing hearing

In preparation for sentencing, the Probation Office prepared a PSR. As explained below, the PSR identified numerous factors relevant to sentencing, including Pinto's family history, his marital and personal relationships, his substance abuse, his mental and emotional health, his education, and his employment history. See PSR ¶¶ 32-65. The PSR calculated the Guideline range to be 87 to 108 months' imprisonment, based upon a total offense level of 29 and Criminal History Category I. PSR ¶¶ 19-30, 72. The PSR's calculation was in accordance with the Guideline range to which the parties stipulated in the plea agreement. DA 27-28.

On December 19, 2013, Pinto appeared before the district court for sentencing. DA 93. Judge Underhill began the proceeding by stating that

he had reviewed the PSR, both side's sentencing memoranda, attachments to defense counsel's memorandum, and victim impact statements. DA 95. Neither party objected to any of the factual statements contained in the PSR, and accordingly the court adopted the factual statements in the PSR. DA 95-96. The court then reviewed the maximum penalties and granted the government's substantial assistance motion. DA 96-97. The court reviewed the sentencing Guidelines calculations which were consistent with the PSR and the plea agreement. DA 98-99. Neither side objected to the court's Guidelines calculations. DA 99.

The court then heard extensive argument from Pinto and the government as to what sentence would be sufficient, but not greater than necessary, to achieve the goals of sentencing. DA 99-116. Additionally, Pinto addressed the court. DA 110-113. Pinto asked the court for a sentence of time served, which was 18 months. DA 100.

After hearing from all parties, the court explained the central factors guiding its sentencing decision. The court first noted that "[t]his is a very, very serious crime," and "[s]erious crimes demand serious punishment" DA 117-18. The court also explained that "the punishment and deterrence purposes of sentencing are extremely important" and that "deterrence, in the white collar fraud context I think is more im-

portant than it often is in sentencing.” DA 118-19. The court acknowledged Pinto’s good deeds (“I don’t doubt that you have done many good things for many people.”) and his cooperation (“I’m very pleased that you cooperated.”). DA 119. Finally, the court noted that he looked at Pinto as an individual, that there was much good about him, and that the court had hope for Pinto. DA 119-20. Finally, the court stated that “I’ve considered all of the factors under the statute and weighed them and, as I said, tried to push this sentence as low as I can” DA 121.

The court then sentenced Pinto to serve a 48-month term of imprisonment followed by 5 years of supervised release. DA 121. Neither Pinto nor his counsel had any objections to the sentence imposed by the court. DA 123.

Summary of Argument

The court did not commit substantive error in imposing a 48-month term of imprisonment. On the contrary, the court credited Pinto’s written and oral arguments for a non-Guidelines sentence by imposing a sentence which represented a decrease of 39 months, or almost one-half, from the bottom of the Guidelines range. The fact that Pinto would have preferred an even shorter sentence does not make his sentence unreasonable.

The facts set forth in the PSR—and adopted by the district court—reflect that Pinto committed serious crimes. These facts were more than

sufficient to support a Guidelines sentence, let alone the district court's conclusion that a below-Guideline sentence of 48 months was appropriate. The district court's judgment should be affirmed.

Argument

I. The district court's 48-month sentence was substantively reasonable.

A. Governing law and standard of review

1. Reviewing a sentence for reasonableness

Following *United States v. Booker*, 543 U.S. 220 (2005), a sentencing judge is required to “(1) calculate[] the relevant Guidelines range, including any applicable departure under the Guidelines system; (2) consider[] the calculated Guidelines range, along with the other § 3553(a) factors; and (3) impose[] a reasonable sentence.” *United States v. Fernandez*, 443 F.3d 19, 26 (2d Cir. 2006); *United States v. Crosby*, 397 F.3d 103, 113 (2d Cir. 2005).

Under 18 U.S.C. § 3553(a), in determining an appropriate term of incarceration, a sentencing court should consider: (1) “the nature and circumstances of the offense and the history and characteristics of the defendant;” (2) the need for the sentence to serve various goals of the criminal justice system, including (a) “to reflect the

seriousness of the offense, to promote respect for the law, and to provide just punishment for the offense,” (b) to accomplish specific and general deterrence, (c) to protect the public from 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;” (3) the kinds of sentences available; (4) the sentencing range set forth in the Guidelines; (5) policy statements issued by the Sentencing Commission; (6) the need to avoid unwarranted sentencing disparities; and (7) the need to provide restitution to victims. As to the length and conditions of supervised release, the sentencing court should consider the factors specified in §§ 3553(a)(1), (a)(2)(B), (a)(2)(C), (a)(2)(D), (a)(4), (a)(5), (a)(6), and (a)(7). *See* 18 U.S.C. § 3583(c).

On appeal, a district court’s sentencing decision is reviewed for reasonableness. *See Booker*, 543 U.S. at 260-62. Reasonableness review is a deferential “abuse of discretion” standard. *Gall v. United States*, 552 U.S. 38, 46 (2007); *United States v. Watkins*, 667 F.3d 254, 260 (2d Cir. 2012); *United States v. Cavera*, 550 F.3d 180, 187 (2d Cir. 2008) (en banc). This reasonableness review consists of two components: procedural and substantive review. *Cavera*, 550 F.3d at 189. The defendant does not allege procedural unreasonableness; he only complains that his

sentence of 48 months was substantively unreasonable.

With respect to substantive reasonableness, this Court has recognized that “[r]easonableness review does not entail the substitution of our judgment for that of the sentencing judge. Rather, the standard is akin to review for abuse of discretion. Thus, when we determine whether a sentence is reasonable, we ought to consider whether the sentencing judge exceeded the bounds of allowable discretion[,] . . . committed an error of law in the course of exercising discretion, or made a clearly erroneous finding of fact.” *Fernandez*, 443 F.3d at 27 (internal citations and quotations omitted). A sentence is substantively unreasonable only in the “rare case” where the sentence would “damage the administration of justice because the sentence imposed was shockingly high, shockingly low, or otherwise unsupportable as a matter of law.” *United States v. Rigas*, 583 F.3d 108, 123 (2d Cir. 2009).

Although this Court has declined to adopt a formal presumption that a within-Guideline sentence is reasonable, it has “recognize[d] that in the overwhelming majority of cases, a Guidelines sentence will fall comfortably within the broad range of sentences that would be reasonable in the particular circumstances.” *Fernandez*, 443 F.3d at 27; *see also Rita v. United States*, 551 U.S. 338, 347-51 (2007) (holding that courts of appeals may apply presumption of reasonable-

ness to a sentence within the applicable Sentencing Guidelines range); *United States v. Rattoballi*, 452 F.3d 127, 133 (2d Cir. 2006) (“In calibrating our review for reasonableness, we will continue to seek guidance from the considered judgment of the Sentencing Commission as expressed in the Sentencing Guidelines and authorized by Congress.”).

2. Plain error review

As the Supreme Court recently reaffirmed, “[a] federal court of appeals normally will not correct a legal error made in criminal trial court proceedings unless the defendant first brought the error to the trial court’s attention.” *Henderson v. United States*, 133 S. Ct. 1121, 1124 (2013). Federal Rule of Criminal Procedure 52(b), however, creates an exception to this general principle. *Id.* Under that Rule, “an appellate court may, in its discretion, correct an error not raised at trial only where the appellant demonstrates that (1) there is an ‘error’; (2) the error is ‘clear or obvious, rather than subject to reasonable dispute’; (3) the error ‘affected the appellant’s substantial rights, which in the ordinary case means’ it ‘affected the outcome of the district court proceedings’; and (4) ‘the error seriously affect[s] the fairness, integrity or public reputation of judicial proceedings.’” *United States v. Marcus*, 560 U.S. 258, 262 (2010) (quoting *Puckett v. United States*, 556 U.S. 129, 135 (2009)); see also *Johnson v. United States*, 520 U.S. 461,

467 (1997); *United States v. Cotton*, 535 U.S. 625, 631-32 (2002); *United States v. Wagner-Dano*, 679 F.3d 83, 94 (2d Cir. 2012).

To “affect substantial rights,” an error “must have been prejudicial: It must have affected the outcome of the district court proceedings.” *United States v. Olano*, 507 U.S. 725, 734 (1993). This language used in plain error review is the same as that used for harmless error review of preserved claims, with one important distinction: In plain error review, “[i]t is the defendant rather than the Government who bears the burden of persuasion with respect to prejudice.” *Id.*

This Court has made clear that “plain error” review “is a very stringent standard requiring a serious injustice or a conviction in a manner inconsistent with fairness and integrity of judicial proceedings.” *United States v. Walsh*, 194 F.3d 37, 53 (2d Cir. 1999) (internal quotation marks omitted). Indeed, “[t]he error must be so egregious and obvious as to make the trial judge and prosecutor derelict in permitting it, despite the defendant’s failure to object.” *United States v. Plitman*, 194 F.3d 59, 63 (2d Cir. 1999) (internal quotation marks omitted).

B. Discussion

This appeal comes to the Court on a largely undisputed record. The parties agreed to the PSR’s factual findings. DA 95. For this reason, the sentencing court was not required to resolve

any factual disputes and thus adopted the factual findings as set out in the PSR. DA 96. The parties also agreed that the PSR correctly calculated Pinto's total offense level to be a level 29 and his Criminal History Category to be a level I. DA 98-99; PSR ¶¶ 28, 72.

Against this backdrop, Pinto now asserts that the 48-month term of imprisonment imposed by the district court was substantively unreasonable. *See* Def.'s Brief at 1-4; 20-33. Instead, Pinto claims a sentence of time served, or 18 months, is justified. Def.'s Brief at 13; Def.'s Sentencing Memo. at 1; DA 100, DA 110. The defendant's argument lacks merit. The district court did not abuse its discretion in rejecting Pinto's request for a sentence of 18 months. To the contrary, the court weighed the seriousness of Pinto's offense against the other § 3553(a) factors and Pinto's numerous and varied arguments for leniency, and determined that a below guideline sentence of 48 months was appropriate.

1. The 48-month term of imprisonment imposed by the district court was substantively reasonable.

Pinto asserts that the 48-month term of imprisonment—a term that was 39 months below the bottom of the agreed-upon Guidelines range—was substantively unreasonable. *See* Def.'s Brief at 1, 20-33. This argument falls short.

As the district court repeatedly stated, the crimes which Pinto committed were serious. (“So, let’s not lose sight of the seriousness of the crime here,” DA 118; “[T]he lives of many other people are in a shambles, too, as a result of what you did, and I can’t ignore that when thinking about the seriousness of this crime.” DA 118; “Serious crimes demand serious punishment” DA 118; “But that hope has to be tempered also with the seriousness which I talked about before and the impact on the victims” DA 120.) Indeed, Pinto’s crimes took place over a four-year period and involved wire fraud, bank fraud and money laundering. He stole from his clients, his bank and his investors. All total, the losses suffered by his victims exceeded \$12 million.

Moreover, Pinto’s theft was carefully calculated and planned so as not to raise suspicions. Pinto hid the fact that he was not remitting collections to his clients by making periodic fraudulent collection reports to certain clients that under-reported the amount of funds collected. Pinto and his co-conspirators would also transfer money from one client trust account to another client account, from Oxford’s operating account to a client account, or from a client account to Oxford’s operating account to cover various shortfalls and backlogs or to improperly use collections to directly fund Oxford’s operations.

Pinto deceived Webster Bank by meeting with Webster Bank employees to discuss Oxford's business, without ever disclosing to the Webster Bank employees Oxford's true financial state. Moreover, Pinto and others sent Webster Bank falsified financial records to induce Webster Bank to maintain and increase Oxford's line of credit.

Pinto deceived investors by never disclosing the significant backlogs and outstanding payroll taxes that Oxford had incurred. Additionally, Pinto and his co-conspirators misrepresented what the funds would be used for and never informed certain investors that they intended to transfer some of the funds to a co-conspirator's personal bank account.

Lastly, Pinto and his co-conspirators used some of the funds that they had fraudulently obtained to fund their other criminal endeavors and thus perpetuate the multiple frauds. Pinto caused Oxford to periodically draw down on its line of credit from Webster Bank into Oxford's operating account. Pinto would then transfer the bank funds from the operating account to a client trust account and include the funds in part of a remittance to one of Oxford's clients. They made such transfers to maintain the client's business and thereby continue their scheme against the client.

With this record, the court took a measured approach to the sentencing process, attempting

to find the lowest sentence possible while still ensuring that justice had been done. DA 119. The court pointed to a number of mitigating factors which supported his below-guidelines sentence, among them Pinto's good works and his cooperation with the government. DA 119. The court also stated it had hope for Pinto—hope that he understood what he had done, hope that he would turn his life around, and hope that he would not commit another crime. DA 120.

On this record, it cannot reasonably be concluded that the court's decision to sentence Pinto to a 48-month term of imprisonment was not "located within the range of permissible decisions." *Cavera*, 550 F.3d at 189.

2. Pinto's appellate arguments largely repeat the same points made before the district court.

On appeal, Pinto argues that his sentence was substantively unreasonable because it failed to adequately account for numerous factors. Many of these "factors" were raised by Pinto below—and explicitly addressed by the district court at sentencing:

- Cooperation with authorities. Def.'s Sentencing Memo. at 15-18; DA 107-108. The court granted the government's substantial assistance motion, DA 97, and stated "I'm very pleased

that you cooperated. That is going to inure to your benefit today.” DA 119.

- Good deeds. Def.’s Sentencing Memo. at 7-9, 11-12; DA 100, DA 109-110. The court stated, “I don’t doubt that you have done many good things for many people,” DA 119, “you have much good about you as an individual, which is, again, going to inure to your benefit today,” DA 120, and “I did read all of the letters. . . . And I hope that you very quickly become, again, the person reflected in those letters,” DA 125.
- Aberrant behavior. DA 101; PSR ¶ 84. The court noted, “It’s harder to sentence somebody who seemingly has led a good life and then took a wrong turn.” DA 117.
- Harsh pre-trial conditions. Def.’s Sentencing Memo. at 4-5, 29-30; DA 100, DA 108. The court acknowledged that Pinto had spent time in high security facilities and was going to recommend to the Bureau of Prisons that Pinto be designated to a low security facility. DA 121.
- Lengthy incarceration term and purposes of rehabilitation. DA 108-110. The court stated that the “purposes of sentencing are punishment, rehabilita-

tion, incapacitation and deterrence. I think here that the punishment and deterrence purposes of sentencing are extremely important. ” DA 118. The court went on to say that particularly in white collar fraud cases deterrence is very important. DA 118-19. Later the court told Pinto that he “ha[d] hope for you,” and referenced his hope that Pinto understood what he had done, turned his life around, and found a way a way to live without returning to a life of crime. DA 120.

Other arguments made to the district court, and repeated here on appeal, were not explicitly addressed by the court at sentencing but were included in the defendant’s sentencing memorandum, which the court relied upon and the PSR, which was adopted by the court. DA 95, DA96:

- Severe collateral consequences. Def.’s Sentencing Memo. at 29; DA 106-107; PSR ¶¶ 46, 66, 69.
- Remorse. Def.’s Sentencing Memo. at 26-28; DA 100-102; PSR ¶ 88.
- Consistent employment. Def.’s Sentencing Memo. at 10; PSR ¶ 63-65.
- Family hardship. DA 101; PSR ¶¶ 22, 45.

- Lacked guidance from his father. Def.'s Sentencing Memo. 5-6, 23-25, DA 102-106. PSR ¶ 35.

The defendant's brief has pointed to nothing to suggest that the court's consideration of all of these factors constituted an abuse of discretion. Pinto's arguments simply repeat the same points he made before the district court. While Pinto would have liked a different weighting of the factors—less emphasis on the seriousness of the offense conduct and more on his own personal characteristics—the weight given to specific factors is for the district court to decide. *Fernandez*, 443 F.3d at 32. It is well-settled that this Court does not substitute its own judgment for that of the district court when reviewing the substantive reasonableness of a sentence. *See United States v. Kane*, 452 F.3d 140, 145 (2d Cir. 2006) (per curiam).

Perhaps recognizing that this Court will not reweigh the § 3553(a) factors that the district court considered below, Pinto raises here two new arguments not explicitly raised below. Because these arguments are raised for the first time on appeal, they are reviewed for plain error. Pinto cannot meet the rigorous plain error standard because he cannot even demonstrate that the court erred below.

First, Pinto argues that his relative old age makes him likely to be a lower risk of recidivism. Therefore, according to Pinto, there was no need

to impose a 48-month sentence based on the concern that Pinto would possibly re-offend upon release. Def.'s Brief at 2, 25. But the court never expressed such a concern or suggested that a concern about recidivism played any role in the 48-month sentence. To the contrary, the court went out of its way to comment that it was hopeful that Pinto had turned his life around and would not re-offend. *See* DA 120.

Second, Pinto argues that the loss amount overstated his criminal conduct and led to a disparity in sentences imposed. Def.'s Brief at 2, 21-23. As a preliminary matter, the court made clear that it was not bound by the guidelines, but rather by its own assessment of the § 3553(a) factors. Indeed, when the court discussed the factors that it considered in sentencing, it did not even mention the guidelines, and thus even if Pinto could show error on this point, he cannot show that this error had any impact on his sentence.

In any event, the comparisons that Pinto draws to other defendants are incomplete and unhelpful. Although Pinto's chart purports to show defendants who had large loss amounts with relatively short prison terms, this chart does not establish that a relatively lengthier prison term for Pinto was an *unwarranted* disparity. For example, because the chart only shows loss amounts, it does not consider other aggravating factors that applied in Pinto's case,

such as enhancements for the number of victims and for Pinto's role in the offense. Similarly, the chart does not tell the Court anything about the personal characteristics of the defendants and thus there is no way to tell what kinds of personal factors contributed to the sentences imposed.

In sum, the district court properly considered the statutory factors, considered both Pinto's written and oral sentencing arguments, and explicitly credited Pinto for his good works, cooperation with the government, and devastating effect this prosecution has had on his life. DA 117-121. A sentence of 48 months, which is 39 months below the bottom of the Guidelines range, is eminently reasonable and can hardly be considered "shockingly high" so as to warrant reversal. *See Rigas*, 583 F.3d at 123.

Conclusion

For the foregoing reasons, the judgment of the district court should be affirmed.

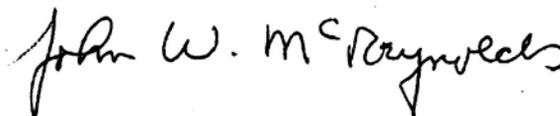
Dated: September 9, 2014

Respectfully submitted,

DEIRDRE M. DALY
UNITED STATES ATTORNEY
DISTRICT OF CONNECTICUT

A handwritten signature in blue ink, appearing to read "Liam Brennan".

LIAM BRENNAN
ASSISTANT U.S. ATTORNEY

A handwritten signature in black ink, appearing to read "John W. McReynolds".

JOHN W. McREYNOLDS
ASSISTANT U.S. ATTORNEYS

Sandra S. Glover
Assistant United States Attorney (of counsel)