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DEPUTY

MONTANA EIGHTEENTH JUDICIAL DISTRICT, GALLATIN COUNTY

STATE OF MONTANA,)	Cause No. DC-12-37A
)	
Plaintiff,)	
)	REASONS FOR SENTENCE
vs.)	
)	
RICHARD F. REYNOLDS, a/k/a)	
RICHARD ADKINS,)	
)	
Defendant.)	

A Sentencing Hearing was held on June 18, 2014. The State was represented by Gallatin County Attorney Marty Lambert and Special Assistant Attorney General Jesse Laslovich. Defendant Richard Reynolds, a/k/a Richard Adkins, represented himself, with former counsel Andrew Bruener and Annie DeWolf appointed and present as stand-by counsel for consultation. After consideration of the information and reports provided in the Pre-Sentence Investigation Report ("PSI"), the letters and attachments to the Pre-Sentence Investigation Report and Addendums, including the Affidavits and letters from the victims, their family and friends, the video statements from the defendant, the defendant's presentation and request at the hearing, and the testimony

and exhibits provided at the sentencing hearing, the Court provides the following Reasons for Sentence.

When imposing a sentence, the Court is required to consider the correctional and sentencing policy and principles identified in Mont. Code Ann. § 46-18-101. The Montana sentencing policy is intended to provide punishment commensurate with the nature and degree of harm caused by the offense and to hold an offender accountable; to protect the public, reduce crime, and increase the public sense of safety by incarcerating violent offenders; to provide restitution, reparation, and restoration to the victims of the offense; and to encourage and provide opportunities for the offender's self-improvement to provide rehabilitation and reintegration of offenders back into the community.

To achieve that policy, the court is to consider and balance the applicable sentencing principles. Those principles include the requirement that sentencing and punishment be certain, timely, consistent, and understandable, and that sentences should be commensurate with the punishment imposed on other persons committing the same offenses. Sentencing practices permit judicial discretion to consider aggravating and mitigating circumstances; include punishment of violent felony offenders with incarceration; and emphasize that the offender is responsible for obeying the law and is accountable for his actions. Sentencing practices also emphasize restitution to the victim.

Defendant Richard Reynolds a/k/a Adkins was originally charged with 20 Felony Counts, which was amended by the State to 6 Felony Counts, including Count 1: Operating a Pyramid Promotion Scheme (Ponzi Scheme); Count 2: Theft by

Embezzlement, as a common scheme; Count 3: Failure to Register as a Securities Salesperson; Count 4: Failure to Register a Security; Count 5: Fraudulent Practices in violation of § 30-10-301(1)(b); and Count 6, Fraudulent Practices in violation of § 30-10-301(1)(c) for his actions relating to investors from approximately May 1, 2009 and August 31, 2011.

The maximum penalty for Operating a Pyramid Promotion Scheme includes a maximum of 10 years at the Montana State Prison and a fine of \$100,000. The maximum penalty for the offense of Theft by embezzlement includes imprisonment in the state prison for a term of not less than 1 year or more than 10 years and a fine of \$50,000. The maximum penalty for the offense of Failure to Register as a Securities Salesperson, Failure to Register a Security, and Fraudulent Practices includes imprisonment in the state prison for a term of not more than 10 years and a fine of \$5,000 for each count. The sentences may be consecutive.

All of these crimes are considered crimes against property, and not against persons. The defendant is therefore a "nonviolent felony offender" by definition, which requires the Court to consider alternatives to imprisonment first, including placement in a community corrections facility or program. Mont. Code Ann. §§ 46-18-104(3); -225. Pursuant to statute, prior to sentencing a nonviolent felony offender, the Court has to consider whether the interests of justice and the needs of the offender can be better served in the community or in a facility or program other than prison; whether there are substantial grounds tending to excuse or justify the offense; whether the offender acted under strong provocation; whether the offender has or will make restitution to the victims; whether the offender has no prior criminal history, or if he does, he has led a

law-abiding life for a substantial period of time before commission of the present crime; whether the conduct was the result of circumstances that are not likely to recur; whether the character and attitude of the offender indicate that he is likely to commit another crime; whether the offender is likely to respond quickly to correctional or rehabilitative treatment; and whether imprisonment would create an excessive hardship on the offender or his family.

The defendant in this case has no prior felony criminal history. The other charges appearing in the Pre-Sentence Investigation Report are primarily misdemeanor traffic tickets. There are two misdemeanor charges of Partner Family Member Assault and Resisting Arrest from 1986 and 1989, identified in the PSI with Unknown Disposition, that the defendant has stated were dismissed. Most of the prior traffic citations were prior to 1987, with a stop sign violation in 1994, operating with expired registration in 1994 and 1995, and a speeding citation in 1995, and a driving without a valid driver's license in 2002. There are no recorded convictions listed from 2002 until these charges were filed in 2012, indicating that the defendant may have led a law abiding life prior to the commission of these crimes.

However, while not criminally charged in other states, the defendant was subject to a Cease and Desist Order from the State of Missouri in May, 2009 requiring penalties and costs in the amount of \$18,000 for violating securities laws with corporations with the same or similar names as those registered with the Montana Secretary of State during that same time. In May, 2012, while these charges were pending, the State of Alabama also issued Cease and Desist Orders directed to the defendant and the

Buffalo Extension, LLP and Buffalo Exchange, LLP, all with Bozeman, Montana addresses, and relating to transactions from 2010.

On December 11, 2013, a jury convicted the defendant of these crimes committed from May 1, 2009 through August 31, 2011, a time frame of approximately 2 years and 4 months. The defendant made representations regarding investments in foreign currency exchange markets to potential investors, some in person, some by telephone, promising the potential for 100% returns each quarter. To some he also described investments in gold or coal mines, also promising potentially attractive returns on their investments. He advised them that these investments were considered high risk. He sent documents to them identified as a Private Placement Memorandum, and had them sign various agreements which he testified gave him unfettered authorization to use their funds any way he chose. He issued confirmation letters acknowledging receipt of their money and the number of "shares" purchased in his respective corporations. He sent quarterly statements to them representing the amount of return on their investments, some of which confirmed in excess of 100% returns. However, the defendant did not actually invest the money he received from these investors in foreign currency exchange markets or the mining operations. Instead, he freely transferred funds between his multiple accounts and businesses to pay personal expenses, trade in his personal E-Trade account, and to transfer funds for other non-investment uses. He did send payments to several investors when requested, but he paid them with funds received from other investors. While the defendant disputed that the money used to pay one investor came from the receipts of another, there were a number of instances when there were no other funds in the accounts when those

requests were paid. Likewise, there was no other source of income or deposits demonstrated for those accounts. The defendant had formed and was involved with at least 8 corporations and partnerships in Montana alone, and was personally and collectively associated with at least 31 separate bank accounts. The defendant did not register as a security salesperson with the State of Montana, nor did he register any securities.

The total number of investor victims was alleged to be over 140. Based on transactions listed in the defendant's various bank accounts, the State has confirmed restitution amounts for 97 victims. Several of the victims testified at trial, and 71 provided Affidavits, letters, and documentation regarding the nature and amount of their pecuniary losses. Montana Deputy Commissioner of Securities Lynne Egan testified that while not all of the identified victims were able to be contacted, and some did not return their Affidavits, as the lead investigator for the State, she and members of her staff reviewed the defendant's bank statements and related documents as detailed at trial and the restitution hearing. She oversaw the investigation, and prepared the reports for the State in support of restitution. She reviewed the Affidavits received and again reviewed the defendant's bank statements to reconcile the amounts requested in the victims' Affidavits with the amounts identified by the State. Through counsel, the defendant cross-examined Ms. Egan extensively at trial, and the defendant questioned her at the sentencing hearing. At a hearing held to address the amount of restitution being requested, counsel for the defendant objected to any amounts that were not supported by Affidavits. The State then requested Affidavits from the victims it could contact, and those Affidavits were filed with the Court and admitted as Exhibits at the

sentencing hearing. The defendant did not present any witnesses refuting the amounts claimed by the victims, did not object to the Affidavits or total amounts of restitution at the sentencing hearing, and made no argument to the Court that the amounts claimed were excessive or not supported by the evidence. The Court has determined the amount of the total restitution award based on the evidence presented at the restitution and sentencing hearings by Ms. Egan's testimony, and the Affidavits and Exhibits admitted at both hearings. The Court therefore awards a total amount of restitution of \$4,455,169.59, including restitution for victims who did not submit an affidavit in the amount of \$377,969.36. The victims are individually identified on Exhibit 1 attached to the Sentencing Order, with those that did not provide individual affidavits highlighted in green.

This defendant's actions were considered and deliberate over an extended period of time. He does not deny receipt of the moneys paid by the victims identified by the State. In the PSI, he states he never violated the terms of the Private Placement Memorandum and made investments accordingly. He also states that he believed he was exempt from the securities registration requirements based on advice of counsel. In his video statements, and at sentencing, the defendant stated that he gave the victims shares of equity in his various companies to guarantee returns until cash started flowing, and that those companies and businesses have viable assets including software, intellectual property rights, and ownership percentages of gross profits in various mining claims from which all of the investor victims can be repaid. He stated that he did not ever decide or intend to steal money, he did everything he could to make the investments successful, and it brought tremendous grief to see the investors stalled.

In spite of his statements, the defendant's conduct and representations were intended to have money sent to him for investments, promising the possibility of great returns. While these investors understood there were financial risks based on the status and performance of the markets, they did not know or understand that the defendant was never going to invest their money in the financial markets or mining interests he had discussed with them. There is no justification or excuse for the defendant's conduct or his failure to make the investments as promised. He spent money he had been entrusted to invest for his own and his family's personal expenses. He transferred investor's funds to his personal E-Trade account and lost all of it. He did not disclose what he was actually doing with the money entrusted to him, and sent false income statements to investors showing profits on which they had to pay income taxes when not only were there no actual profits, there had never been any actual investment of the funds. He had been formally advised of the requirements for the sale and registration of securities, and he chose not to follow those rules or apply for an exemption.

The defendant is 52 years old at the time of sentencing. He is married and has 9 children. He has family support evidenced by testimony at trial and their attendance at the numerous Court hearings in this case.

In the PSI, the defendant reported that he was raised by adoptive parents and experienced mental and physical abuse. He has 9 biological siblings, all adopted out to different families, except one of his sisters was adopted by the same family he was with. He quit high school his senior year, but earned his GED in 1979. He attended college but did not obtain a degree. He does not report any alcohol or drug addiction, and has

never had any chemical dependency treatment or counselling. He has never been diagnosed with a mental illness and is not taking any mental health medication. He is a type-two diabetic, has high blood pressure and back pain, and reports his health as fair.

The defendant reported minimal assets and unknown debts. He is currently unemployed due to incarceration, but has been self-employed and is physically capable of working. In the PSI he stated would like to start a bakery, and at the sentencing hearing he indicated he also planned to write a book. He does not contest that he should be responsible for payment of restitution, but believes that there are assets available to repay the investors.

The State is recommending a sentence of 10 years of incarceration on each count, consecutive, for a total of 60 years commitment to the Montana State Prison, with 10 years suspended. The defendant requested a deferred imposition of sentence.

The Court has considered the circumstances and consequences of the defendant's actions, and carefully reviewed the video provided by the defendant and the letters from the victims in an effort to understand why the defendant chose to contact these individuals, what was promised to them, and where and how their investment dollars were spent. The Court is concerned that the defendant continues to minimize his accountability for his actions. These were not crimes of passion. The defendant's actions were not a mistake or accidental in nature. They cannot be mitigated or explained by the defendant's age or social history. There are no excuses to condone the defendant's conscious behavior. There were no circumstances beyond the defendant's control. There were no "unique circumstances" to justify the defendant's theft of funds entrusted to him. The defendant's actions were calculated, long-term and

deliberate. He was not acting under some strong provocation; he was acting with intentional misrepresentation and greed.

While the defendant's past criminal history includes nothing similar to these crimes, which hopefully indicates he may be susceptible to rehabilitation and may not be likely to re-offend, consideration of the facts that the defendant persisted in his conduct over the course of a number of years, the deliberate and calculated decisions required to make the hundreds of financial transactions and transfers involving multiple entities and bank accounts, the false income reports and continuing misrepresentations made to investors trusting him with their funds, the hiding and cover-up of the crimes on repeated incidences, and the defendant's continued belief that his actions were authorized and in the spirit of his Private Placement Memorandum, all counter that. The Court does not believe that any of the facts in this case mitigate or reduce the defendant's culpability in any way. He stole millions of dollars under the guise of promised profits. He continues to justify his actions through his belief that providing shares in businesses he believes to be potentially profitable was authorized and acceptable, when he spent money for his personal use and did not ever actually invest the funds he was given. The circumstances of these crimes are outrageous, aggravated, and intolerable, here or anywhere else.

Letters from the victims and their families were included with the PSI, all recounting the overwhelming feeling of betrayal, shame, and loss resulting from the defendant's actions. While some express resilience and have been able to withstand the financial loss, many of the victims were retired. Not only did they lose the safety of their retirement, they have experienced decline in their physical and mental health.

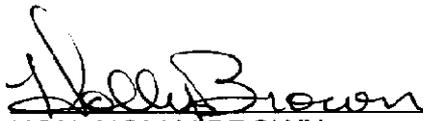
They now have to rely on the support of their families when they should have been financially secure. They have had to get jobs even though they have already worked hard for their entire lives. They have to limit their spending, shop at thrift stores, and hope they do not out-live what they have left in their retirement funds. They lost the inheritance they planned for their children and grandchildren. They lost their dreams.

Montana's correctional policy requires the Court to consider reparation and restoration to the victims, and while that has been done through the award of restitution, there is nothing that this Court can do to restore the trust of the victims that have been forever damaged by the conduct of this defendant. They will live with the emotional and financial trauma and psychological injuries he inflicted on them for the rest of their lives. However, the Court can give these victims the assurance that this defendant will be held accountable for his conduct by imposing serious consequences for his crimes, and that he will be on probation for the remainder of his life to provide supervision for the payment of restitution and prevent him from victimizing anyone else.

The correctional policy to provide opportunities for rehabilitation and reintegration into the community has to be balanced against the interest of justice and safety of the public. While the age, maturity, and criminal record of the defendant might indicate that there should be some more lenient consideration for what he did here, the amount of planning, repeated misrepresentations and manipulation of accounts involved, the amount of money taken is too significant, and the amount of time needed to pay even a fraction of the funds taken is too long to allow for consideration of a deferred imposition of sentence. Given the serious nature of the crimes and consequences involved in this case, the deliberate on-going nature of these crimes, and the amount of restitution

required, the Court does not find that the alternatives to incarceration are appropriate in this case. Although considered non-violent, this defendant remains a dangerous potential financial predator. His conduct was aggressive, intentional, and destructive, and the Court believes that he requires long-term incarceration to protect the financial safety of victims, the community of Bozeman, and the people of the State of Montana and across the entire United States. The Court therefore concludes that the interests of justice and the needs of the offender cannot be served in the community or in a facility or program other than prison. However, a suspended portion of the sentence is also required for the same reasons, particularly given the amount of restitution to be paid.

DATED this 19th day of June, 2014.


HON. HOLLY BROWN
District Court Judge

cc: Marty Lambert
Richard Reynolds aka Richard Adkins
Andrew Bruener/Annie DeWolf
Montana Department of Corrections
Gallatin County Detention Center

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06/19/14