

**NOT RECOMMENDED FOR FULL-TEXT PUBLICATION**

No. 11-3942

UNITED STATES COURT OF APPEALS  
FOR THE SIXTH CIRCUIT

**FILED**  
**Nov 05, 2012**  
DEBORAH S. HUNT, Clerk

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff-Appellee,	)	
	)	
v.	)	ON APPEAL FROM THE UNITED
	)	STATES DISTRICT COURT FOR
CHRISTOPHER E. KEIFER,	)	THE SOUTHERN DISTRICT OF
	)	OHIO
	)	
Defendant-Appellant.	)	

**ORDER**

Before: BOGGS and CLAY, Circuit Judges; HOOD, District Judge.\*

Christopher E. Keifer, a federal prisoner proceeding *pro se*, appeals the district court's judgment sentencing him to eighty-seven months of incarceration for bank fraud and fraud with access devices and ordering him to pay restitution in the amount of \$915,395.49. This case has been referred to a panel of the court pursuant to Federal Rule of Appellate Procedure 34(a)(2)(C). Upon examination, this panel unanimously agrees that oral argument is not needed. Fed. R. App. P. 34(a).

In 2005, Keifer was released from prison. Shortly thereafter, he met Nathan Simons on the internet and moved to Columbus, Ohio, in 2006. Keifer, using the alias Christopher McPherson, became President of the McPherson Property Group, which advertised itself as a full-service real estate development and management company and purported to operate in Texas, Nevada, Ohio, West Virginia, and Pennsylvania. In 2006 and 2007, Keifer induced Simons to purchase shares of the McPherson Property Group to invest approximately \$30,000 in a property in West Virginia and invest \$5,600 in a coffee shop. Additionally, Keifer opened thirty-one bank and merchant accounts

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\*The Honorable Joseph M. Hood, United States District Judge for the Eastern District of Kentucky, sitting by designation.

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using fifty-six different names and received payment from numerous entities for renovation work that he never performed.

On May 30, 2008, Keifer was arrested. In August 2008, Keifer was indicted on two counts of bank fraud, one count of uttering a forged security, and one count of fraud and related activity in connection with access devices. Two weeks later, Keifer pled guilty. The magistrate judge accepted the guilty pleas with respect to the bank-fraud and access-devices counts, but rejected the guilty plea on the forged-security count because the Government did not sufficiently establish that the stock certificates were counterfeit. Thereafter, the magistrate judge granted the Government's motion to dismiss the forged-security count. The district court held sentencing hearings on September 11, 2009, October 16, 2009, and October 30, 2009. During the hearing on October 16, the district court denied Keifer's motion to withdraw his guilty plea. At the hearing on October 30, the district court heard testimony from Simons, sentenced Keifer to eighty-seven months of incarceration, and set further briefing concerning Simons's entitlement to restitution. After another hearing, the district court ordered that Keifer pay restitution to the numerous victims of the offenses, including \$36,740 to Simons.

After the district court entered an amended judgment, Keifer timely appealed. Although Keifer was initially represented by counsel on appeal, this court granted counsel's motion to withdraw. Keifer elected to proceed *pro se*. Additionally, Simons filed a motion to intervene, which a motions panel carried with the case.

Keifer asserts that the Government withheld material exculpatory evidence in violation of *Brady v. Maryland*, 373 U.S. 83 (1963). However, "*Brady* is concerned only with cases in which the government possesses information which the defendant does not . . . ." *United States v. Mullins*, 22 F.3d 1365, 1371 (6th Cir. 1994). Here, Keifer created the more than 3,000 documents in question and turned them over to the Secret Service. Therefore, Keifer cannot state a *Brady* violation.

More than a year after entering his guilty plea, Keifer sought to withdraw it. The district court denied this request after analyzing the seven factors set forth in *United States v. Bashara*, 27 F.3d 1174 (6th Cir. 1994), *superseded in part on other grounds as stated in United States v.*

*Caseslorente*, 220 F.3d 727, 734 (6th Cir. 2000). We review that denial for abuse of discretion, *United States v. Dixon*, 479 F.3d 431, 436 (6th Cir. 2007), and place the burden on Keifer to demonstrate that proper grounds existed. *United States v. Triplett*, 828 F.2d 1195, 1197 (6th Cir. 1987). The district court carefully considered each of the *Bashara* factors. Particularly important here, Keifer waited 407 days to submit his motion. Additionally, Keifer has extensive experience with the criminal-justice system, including prior federal convictions in Kansas, Oklahoma, and North Dakota. We conclude that the district court did not abuse its discretion in denying Keifer's motion to withdraw his guilty plea.

Keifer also challenges the restitution award to Simons. We review *de novo* the propriety of ordering restitution, and review the amount of restitution ordered for an abuse of discretion. *United States v. Boring*, 557 F.3d 707, 713 (6th Cir. 2009). The Mandatory Victims Restitution Act "made restitution mandatory for offenses against property under Title 18, 'including any offense committed by fraud or deceit.'" *United States v. Elson*, 577 F.3d 713, 721 (6th Cir. 2009) (quoting 18 U.S.C. § 3663A(c)(1)(A)(ii)).

Keifer asserts that Simons is not entitled to restitution since the Government dismissed the count upon which Simons's restitution is most closely associated—the forged-security count. Restitution cannot be based on conduct unrelated to the "offense of conviction." *See Hughey v. United States*, 495 U.S. 411, 418-20 (1990) (holding that "loss caused by the conduct underlying the offense of conviction establishes the outer limits of a restitution order"). Here, Simons's restitution flowed from stock purchases in the McPherson Property Group. Keifer agreed to plead guilty to uttering a forged security, but the Government later dismissed that count. However, in cases that involve a pattern of criminal activity, as is the case here, restitution may be ordered to "any person directly harmed by the defendant's criminal conduct in the course of the scheme, conspiracy, or pattern." 18 U.S.C. § 3663A(a)(2). This court has broadly construed conduct involved in the "offense of conviction." *See Elson*, 577 F.3d at 722; *United States v. Johnson*, 440 F.3d 832, 850 (6th Cir. 2006). Additionally, where the defendant pleaded guilty we "look to the plea agreement,

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the plea colloquy, and other statements made by the parties to determine the scope of the ‘offense of conviction’ for purposes of restitution.” *Elson*, 577 F.3d at 723.

Examining the record in this case, we conclude that the McPherson Property Group was a part of Keifer’s overall fraudulent real-estate scheme. Keifer opened business credit-card and bank accounts in the name of the McPherson Property Group. He additionally signed contracts under the business’s name for renovation work that was never performed, and for which the district court awarded restitution. At the plea colloquy, Keifer stated that he was guilty of giving worthless shares in the McPherson Property Group to Simons with an intent to defraud him. Under these circumstances, we determine that Simons was directly harmed by Keifer’s conduct and is entitled to restitution. *See Elson*, 577 F.3d at 723; *see also* 18 U.S.C. §§ 3663(a)(2) & 3663A(a)(2).

Additionally, Keifer asserts that the district court should have levied an offset against Simons’s restitution because Keifer paid Simons an overly generous \$150,000.00 per annum salary and Simons enjoyed numerous luxuries at the expense of the McPherson Property Group. Keifer, however, does not dispute the district court’s computation of restitution owed for the purchase of the worthless shares. Moreover, the applicable statute does not contemplate a reduction in restitution here. 18 U.S.C. § 3663A(a)(3). Indeed, “[n]othing in the detailed provisions of the statute contemplates that a defendant guilty of criminal fraud can escape mandatory restitution by requiring district courts to conduct mini-trials on the possible contributory negligence of the very persons victimized by the defendant.” *United States v. Zafar*, 291 F. App’x 425, 429 (2d Cir. 2008). Accordingly, the district court did not abuse its discretion in affixing the amount of restitution due to Simons.

Simons seeks to intervene in this appeal, arguing entitlement to appellee status under the Crime Victims’ Rights Act, Pub. L. No. 108-405, 118 Stat. 2260 (codified at 18 U.S.C. § 3771) (2004). The courts of appeal have uniformly rejected this argument. *United States v. Monzel*, 641 F.3d 528, 542 (D.C. Cir.), *cert. denied*, 132 S. Ct. 756 (2011); *United States v. Aguirre-Gonzalez*, 597 F.3d 46, 52-55 (1st Cir. 2010); *United States v. Hunter*, 548 F.3d 1308, 1317 (10th Cir. 2008). Also, contrary to Simons’s argument, *United States v. Perry*, 360 F.3d 519 (6th Cir. 2004), does not

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control here because that case involved a civil judgment. We, therefore, deny Simons's motion to intervene.

For the foregoing reasons, we deny Simons's motion to intervene and affirm the district court's judgment. Fed. R. App. P. 34(a)(2)(C).

ENTERED BY ORDER OF THE COURT

A handwritten signature in black ink, appearing to read "Deborah L. Smith", is written over the printed name of the Clerk.

Clerk