

Heartland Heartbreak - How a Small-Town Banker's Crypto Gamble Led to a Bank's Collapse



In this small farming community of just over 1,800 residents, Heartland Tri-State Bank stood as a pillar of financial stability for generations. That is, until its trusted CEO, Shan Hanes, fell victim to an elaborate cryptocurrency scam, leading to the bank's shocking collapse and leaving a community in financial ruin.

Mr. Hanes, 53, a fixture in Elkhart's tight-knit community, began his descent into financial malfeasance in December 2022. What started as innocent communication on WhatsApp with an unidentified individual quickly spiraled into a classic "pig-butcher" cryptocurrency scam.

A Familiar Pig Butchering Scam, But He Never Saw The Danger

The scam followed a familiar pattern: Initial investments were followed by requests for larger sums to "secure" or "unfreeze" funds. Mr. Hanes, seduced by the promise of easy riches, first exhausted his personal funds. In a fateful escalation, he then turned to embezzlement.

Court documents reveal a startling progression. In early 2023, Mr. Hanes began siphoning funds from the Elkhart Church of Christ and the Santa Fe Investment Club. But the scammers' appetite was insatiable, pushing Mr. Hanes to take even more drastic measures.



On May 17, 2023, Mr. Hanes made his first illicit wire transfer from Heartland Tri-State Bank — a relatively modest \$5,000 to Payward Ventures, a cryptocurrency exchange. This opened the floodgates. Over the next eight weeks, Mr. Hanes orchestrated a series of increasingly large transfers: \$1.5 million on May 30, another \$1.5 million the very next day, \$3.5 million on June 2, followed immediately by another \$3.2 million.

The biggest blow came on June 14, when Mr. Hanes wired an astounding \$10 million of the bank's funds. As suspicions grew among employees, Mr. Hanes resorted to elaborate lies and misdirection. He even manipulated a bank investor's account, using it as a pass-through for an \$8 million transfer on July 5.

The Bank Collapses Leaving A Community Devastated

By July 7, when Mr. Hanes made his final transfer of \$4.4 million, he had embezzled a total of \$47.1 million — more than enough to sink the small rural bank. Heartland Tri-State Bank failed on July 28, 2023, leaving the community reeling.

“I signed off on eight of the 10 wire transfers in the case” because Hanes lied to her, says Mandy Burton, the former Heartland CFO. She and her husband, who were investors, took a large financial loss. “I was left to deal with regulators and investigators. ... I worked 21 days straight.”

The fallout has been severe. Elkhart Financial Corporation, the bank's holding company, saw its shares become worthless overnight. Retirees lost their life savings, and families saw their financial futures evaporate.

Sentenced To 24 Months In Prison This Week

This week Hanes received his sentence after pleading guilty and the heavy hand of the law came down hard on him – 24 years in Prison.

US Attorney **Kate E. Brubacher** commented, “Hanes’ greed knew no bounds. He trespassed his professional obligations, his personal relationships, and federal law.”

"Not only did Shan Hanes betray Heartland Bank and its investors, but his illegal schemes also jeopardized confidence in financial institutions," Brubacher said.

“News crews and journalists have cast a negative light” on the community, says Jim Tucker, a county commissioner who said Hanes lied about the bank having a \$100 million bond when actually it was only \$2 million. Tucker’s family held 8,602 shares of Heartland, once worth about \$1.4 million. “My family’s dreams have been wiped out.”

Hanes Pleaded With Court That He Lost Money Too.

Before sentencing, Hanes pleaded with the court that he was a victim too and that he should be treated fairly.

He bulleted out in his defense that he had lost \$1.1 million of his own money.

- \$60,000 from daughters college fund
- \$300,000 from his savings accounts
- \$5,000 from his personal TriState account
- \$100,000 in personal loan proceeds

- \$964,080 in stock proceeds from the bank which he lost.

“I had no intention of ever causing the harm that I did,” he says in a weak voice. He acknowledges that his family — his wife and three grown daughters — will deal with his actions for the rest of their lives. “To the shareholders, they were my friends and family, too.”

He also argued that if he was in prison, he could not make restitution payments to the victims.

Read the Court Documents Attached

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UNITED STATES DISTRICT COURT

District of Kansas

(Wichita Docket)

UNITED STATES OF AMERICA,

Plaintiff,

v.

CASE NO. 24-10013-JWB

SHAN HANES,

Defendant.

UNITED STATES' SENTENCING MEMORANDUM

The United States respectfully requests a sentence of 264 months imprisonment for the defendant, Shan Hanes', conviction for Embezzlement by a Bank Officer. Further, the United States recommends this Court impose a 5-year term of Supervised Release with the Standard, Mandatory, and Special Conditions as recommended in the Amended Presentence Investigation Report (PSR) (Doc. 22), and a \$100 special assessment as required by 18 U.S.C. § 3571(b). A term of 264 months imprisonment is the just and appropriate sentence for the defendant in view of the sentencing factors under 18 U.S.C. § 3553(a). Specifically, the United States contends that a 264 month sentence is sufficient but certainly not greater than necessary to meet the objectives outlined in 18 U.S.C. § 3553(a).

I. Procedural History

On May 23, 2024, the defendant pled guilty to Count 1 of the Information (Doc. 1). charging a violation of 18 U.S.C. § 656, that is, Embezzlement by a Bank Officer. By entering into the Plea Agreement, the defendant admitted to knowingly committing the offense, and to being guilty of the offense. (Doc. 16, ¶ 1). The maximum sentence which may be imposed as to Count 1 of the Information to which the defendant pled guilty is not more than 30 years' imprisonment, a fine up to \$1,000,000, a term of supervised release of up to 5 years and a \$100.00 mandatory special assessment. *id.* The defendant further agreed to the forfeiture of property to the United States, and restitution payable to the identified victims. (Doc. 16, ¶¶ 1, 8-9).

In exchange for this plea, the United States agreed 1) to not file additional charges against the defendant arising out of the facts forming the basis for the present Indictment; and 2) to allow the defendant to request a downward departure while the United States would recommend a sentence no higher than the high end of the United States Sentencing Guideline (USSG) range. (Doc. 16, ¶ 5).

II. Factual Background

Heartland Tri-State Bank (HTSB) was a small, rural, financial institution located in Elkhart, Kansas. The defendant, along with a host of investors, formed the Elkhart Financial Corporation to purchase HTSB's predecessor and invest in the (presumed) success of HTSB. Elkhart Financial Corp. was a holding company invested solely in the

existence of HTSB. The victims' investment in Elkhart Financial Corp. only remained if HTSB continued.

Heartland Tri-State Bank failed on July 28, 2023. The defendant, Shan Hanes serving as HTSB's Chief Executive Officer (CEO), had wired out \$47.1 million of bank funds. Essentially, \$47.1 million of the bank's deposits were jettisoned into the ether with a misguided, and criminal, intent to convert those funds into cryptocurrency "investments." In only 8-weeks, from May 16 through July 7, 2023, the defendant's attempts to purchase cryptocurrency made HTSB non-viable, while he concealed the truth of his activity from HTSB employees and investors.

The Federal Bureau of Investigation (FBI), and the Office of Inspector General (OIG) for the Federal Deposit Insurance Corporation (FDIC), Federal Reserve Bank (FRB) and Federal Housing Finance Agency (FHFA) responded immediately and conducted an investigation.

In December 2022, Shan Hanes began making financial transactions to purchase¹ cryptocurrency. The cryptocurrency purchases appeared to be precipitated by communication with an unidentified co-conspirator on the electronic messaging app "WhatsApp". To date, the true identity of the co-conspirator, or conspirators, remain unknown.

¹ "Purchase" for purpose of this memorandum, entail the transfer of United States Currency, using HTSB funds, under the care, custody or control of the defendant to various cryptocurrency banks or exchanges for the purported conversion into some form of cryptocurrency product.

The initial cryptocurrency purchases were made with the defendant's personal funds. However, in early 2023 the cryptocurrency purchases were made with funds the defendant embezzled from the Elkhart Church of Christ and the Santa Fe Investment Club².

In May 2023, the scheme³ accelerated and the defendant began to make wire transfer transactions from HTSB, using HTSB funds, for the purpose of purchasing cryptocurrency. Continued electronic communications between the defendant and the co-conspirator illustrate a common pattern. First, there is an initial "investment" followed by another transaction required to secure or guarantee those funds. Further "investments" may be made, but always require another need for funds, to guarantee or unfreeze the earlier transfers. This pattern is clearly represented in the defendant's embezzlement.

Approx. Date of Wire	Amount	Transfer
5/17/2023	\$5,000	Wire transfer caused by defendant from HTSB to Payward Ventures.
5/30/2023	\$1.5 million	Wire transfer caused by defendant from HTSB to Payward Ventures.
5/31/2023	\$1.5 million	Wire transfer caused by defendant from HTSB to Payward Ventures.

² As noted in the defendant's sentencing memorandum, these embezzled funds have been repaid to the Church and the Investment Club. (Doc. 26 at 5).

³ As noted in the FRB investigation, this scheme is often referred to as "pig-butchering." According to an alert issued by the U.S. Department of the Treasury's Financial Crimes Enforcement Network (FinCEN), this scam involves a scammer convincing a victim (a pig) to invest in supposedly legitimate virtual currency investment opportunities and then steals the victim's money – butchering the pig.

Approx. Date of Wire	Amount	Transfer
6/2/2023	\$3.5 million	Wire transfer caused by defendant from HTSB to Payward Ventures.
6/2/2023	\$3.2 million	Wire transfer caused by defendant from HTSB to Payward Ventures.
6/14/2023	\$10 million	Wire transfer caused by defendant from HTSB to Payward Ventures.
6/20/2023	\$1.4 million	Wire transfer caused by defendant from HTSB to Payward Ventures.
6/23/2023	\$10.3 million	Wire transfer caused by defendant from HTSB to Payward Ventures.
6/27/2023	\$3.3 million	Wire transfer caused by defendant from HTSB to Payward Ventures.
7/5/2023	\$8 million	Wire transfer caused by defendant from HTSB to Payward Ventures.
7/7/2023	\$4.4 million	Wire transfer caused by defendant from HTSB to Payward Ventures.

Ultimately, the lure of easy money quickly results in the complete loss of all funds. It was particularly “easy money” in this case as the defendant used his position and authority as CEO of Heartland Tri-State Bank to make and authorize the wire transfers or direct other HTSB employees to make the wire transfers on his behalf. It was certainly devastating in this case when the defendant had access to such a large amount of money. It was terribly quick in this case, as the defendant embezzled those funds in a short 8-week period.

The defendant Shan Hanes did not have authority to make these wire transfers, investments or transactions using HTSB funds to purchase cryptocurrency. To further his scheme, and conceal the scheme, the defendant made many misrepresentations to various people to secure access to and transfer the funds. The defendant directed HTSB employees to make the wire transfers and lied to HTSB employees about the purpose of the transfers. HTSB had policies in place to attempt to curb such risk, but since the defendant was the CEO, with the ultimate responsibility to ensure the integrity of the institution, his willingness to wholly betray that responsibility bypassed those safeguards. Put simply, he had the power to order the transactions, and his reputation and the respect he garnered from employees, members of HTSB board of directors and the community, afforded him the ability to use it without being questioned, at least initially. Later, after millions continued to flow from HTSB, the defendant was questioned about his activity. At this point the defendant actively lied to the employees and board of directors. He denied that cryptocurrency was involved. He induced a bank investor to act as unwitting cover for one large transfer. The defendant used the investor's HTSB account as a pass-through to convert HTSB funds into a wire transfer for cryptocurrency. This was the \$8 million wire transfer on July 5, 2023.

III. Sentencing in General

As a matter of administration and to secure nationwide consistency in sentencing, the Guidelines should be the starting point and the initial benchmark for sentencing. *See*

Rita v. United States, 551 U.S. 127 S.Ct. 2456, 168 L.Ed.2d 203 (2007). However, the Guidelines are not the only consideration. See *United States v. Booker*, 43 U.S. 220, 125 S.Ct. 738, 160 L.Ed.2d. 621 (2005). The sentencing court must engage in a three-part analysis to determine the appropriate sentence. First, the court must consider the Guideline range. A sentence within the guideline range is presumed reasonable. *United States v. Kristle*, 437 F.3d 1050, 1055 (10th Cir. 2006).

Second, the court must address any grounds for departure provided in the policy statements. A departure is a deviation from the calculated guidelines range based on the enumerated departure provisions in the Guidelines Manual. On the other hand, a variance occurs when the district court deviates from the guidelines range based on the sentencing factors in 18 U.S.C. § 3553(a) and the court's responsibility to impose a sentence that is "sufficient" but "not greater than necessary" to meet the sentencing objectives in that provision. *United States v. Kaspereit*, 994 F.3d 1202, 1214 (10th Cir. 2021)(internal citations omitted). See also 2021 Guidelines Manual, § 1B1.1, pg. 17-18.

Third, the court last considers the factors under 18 U.S.C. § 3553(a). See *Rita*, 551 U.S. at 351. 18 U.S.C. § 3553(a) provides seven statutory factors for the court to consider to impose a sentence that is sufficient, but not greater than necessary: (1) the nature and circumstances of the offense and the history and characteristics of the defendant; (2) the need for a sentence to reflect the seriousness of the crime, deter future criminal conduct, prevent the defendant from committing more crimes and provide

rehabilitation; (3) the sentences that are legally available; (4) the sentencing guidelines; (5) the Sentencing Commission's policy statements; (6) the need to avoid unwarranted sentence disparities; and (7) the need for restitution. The sentencing court can and should engage in a holistic inquiry of these factors. *United States v. Lente*, 759 F.3d 1149, 1174 (10th Cir. 2014).

On appellate review, the court applies a two-step process. First, the court confirms the district court correctly calculated the Guideline range. Second, the court examines under an abuse of discretion standard, the substantive reasonableness of the sentence, considering the totality of the circumstances including the extent of any variance from the Guidelines. *Gall v. United States*, 552 U.S. 38, 51, 128 S.Ct. 586, 169 L.Ed.2d 445 (2007).

IV. Amended Presentence Investigation Report and the Defendant's calculated guideline range

The United States Probation Office conducted a pre-sentence investigation and determined the properly calculated sentencing range to be 235-293 months imprisonment. (Doc. 22, ¶ 87). The guideline calculation was primarily driven by a host of aggravating factors and the defendant's specific role and characteristics. The base offense level, specific characteristics and defendant's acceptance of responsibility result in a total offense level of 38. (Doc. 22, ¶ 46-57).

A. **The loss “characteristic”**

The USSG provide for a 22-level increase in offense level based on the loss suffered in this case, specifically \$47,105,000 in HTSB funds. Consequently, the loss and subsequent collapse of the bank caused further loss to shareholders of the Elkhart Financial Corporation, the holding company with capital investment in HTSB. These losses are approximately \$9.2 million, the cost-basis of direct investments, excluding the increases in stock value.

B. **Substantial financial hardship**

The USSG provide for a 6-level increase for offenses resulting in substantial financial hardship to 25 or more victims. Once HTSB became insolvent, the shares of Elkhart Financial Corporation were valueless. Each investor had the entire value of their contributions disappear. This includes the original capital investment, stock value gains and expected future income from potential dividends. The investment loss resulted in a substantial impact of the victims’ retirement plans, available funds, lifestyle choices, future financial security and current stability.

C. **Jeopardizing a financial institution**

The USSG provide for a 4-level increase if the offense of conviction substantially jeopardizes the soundness of a financial institution. As a result

of the fraud committed by the defendant, HTSB became severely under-capitalized and failed as an ongoing financial institution. The FDIC was

D. Abuse of a position of trust

The USSG provide for a 2-level enhancement for a defendant's abuse of a position of trust that significantly facilitated the commission or concealment of the offense. During the course of the embezzlement the defendant was the CEO of HTSB. Additionally, the defendant was employed by the predecessor of HTSB and was instrumental in gathering investors to purchase the financial institution that would become HTSB. The defendant was the chairman of the Kansas Banker's Association in 2021 and 2022 and served on other national and local finance-related committees.

V. Restitution

The United States requests the Court schedule a restitution hearing on a later date, but withing 90-days of the sentencing hearing conducted on August 19, 2024. 18 U.S.C. § 3664(d)(5). The United States Probation Office and the defendant support this request.

The losses attributed to the defendant's embezzlement are staggering with concomitant restitution requests. However, the valuation and extent of permitted claims is not yet settled. As to Elkhart Financial Corp., the United States

Attorney's Office provided the USPO with losses ranging between the initial stock purchase cost-basis and the final stock "value" reported prior to the failure of HTSB. However, Elkhart Financial Corp. victims supported their requests with varying amounts of paperwork. When those differences are multiplied across 35 different ownership groups it creates an opportunity for the parties to create more clarity in the requests.

Additionally, some of the named ownership groups have not requested restitution or provided information to certify associated losses. Further, some victims have made restitution requests based on claims not related to direct investment, but may still be deemed by the Court to be direct and proximate harm. Finally, the FDIC is a named victim in the instant case. As receiver for HTSB, the FDIC steps into the shoes of HTSB as a non-governmental victim, and the FDIC makes specific requests as to its standing and pro rata share in relation to Elkhart Financial Corp. victims. (Doc. 22-1). This position is contrary to the USPO's position (Doc. 22, ¶ 120) and different than the defendant's assumption. (Doc. At 5). The subject is worth clarifying for the Court.

Excising the restitution issue from the main sentencing will also allow the United States Attorney's Office to gain insight into possible asset forfeiture and restitution collection efforts. This may inform the Court's decisions at a later hearing. At the August 19 sentencing the Court will be free to focus on the specific

factual and legal circumstances relevant to the defendant and victims without the distraction of possibly highly technical but non-thematic arguments.

VI. United States' Argument

A. Sentencing Purposes

Title 18 United States Code, Section 3553(a)(1) instructs a sentencing court to consider “the nature and circumstances of the offense and the history and characteristics of the defendant.” Subsection (a)(2)(A) instructs, in part, a sentencing court to consider the need for the sentence imposed “to reflect the seriousness of the offense” and “to promote respect for the law.” *Id.* Subsection (a)(2)(B) instructs a sentencing court to consider the need for the sentence imposed “to afford adequate deterrence to criminal conduct.” *Id.* Subsection (a)(2)(C) instructs a sentencing court to consider the need for the sentence imposed “to protect the public from further crimes of the defendant.” *Id.*

The result of the defendant’s criminal activity was the failure of a bank, flatlining of its financial holding company, the erosion of a community’s sense of trust and the permanent alteration of many citizens’ financial futures. As reflected in the USSG guideline calculation and application of the numerous aggravating factors, this offense is of an egregious nature rarely seen in white-collar prosecutions in the District of Kansas.

The public deserves authenticity and honest service from people in positions of trust. The United States values and relies upon the safety and security of the financial system and its institutions. Citizens cannot afford the system and institutions to be put at risk, for whatever reason. Vulnerability to criminal activity can be devastating, as it was here. Thus, a robust sentence is necessary to deter further criminal conduct by any potential threats and promote respect for the law. The lure of easy money cannot be allowed to outweigh the threat of punishment, or the crime will be perceived as worth the risk.

While it may seem unlikely the public is at risk from further crimes of the defendant, the pattern of criminal activity in this case causes some pause. The defendant invested his own funds into cryptocurrency, arguably to “get rich quick”, and pivoted to using money from his Church and Investment Club. Once those funds were not enough, he dipped into the HTSB coffers. It is a pattern of escalating behavior. It shows an evolution in his criminal activity.

B. Sentencing Factors

The United States agrees the defendant has no criminal history. The matter pending in Morton County, Kansas encompasses the same embezzlement activity described herein.

The United States acknowledges the defendant was quick to accept responsibility. The defendant, through his attorney, engaged with the United States Attorney's Office soon after it was clear a criminal investigation was pending. He voluntarily surrendered his passport prior to charges being filed. The defendant entered a plea to an Information, waiving his right to indictment by a Grand Jury.

The defendant has cooperated with the United States Attorney's Office in the collection such small amounts of restitution available to this point. The repayment of restitution is of critical concern to the United States and the victims in this case. However, full recompense appears nearly impossible no matter what age the defendant has available in his working years. Further, with the large number of victims and staggering loss, any restitution would be spread quite thin. Factoring in the FDIC as a victim, that sustained a loss caused by \$47.1 million of direct embezzlement, any measurable impact to a single victim is highly unlikely.

VII. Conclusion

Most, if not all, of the individuals the defendant deceived were also Elkhart Financial Corp. investors, and current or former residents of the City of Elkhart. Each held the defendant in high esteem, valued his perceived financial acumen and viewed him as a neighbor. The defendant was supposed to lead the bank and community. HTSB represented, quite literally, a critical investment of each victim in their future. It was a

part of retirement plans, estate planning, succession planning and investment in the community.

The investment, financial and personal, can never be restored.

The defendant's conduct, measured by the 18 U.S.C. § 3553(a) factors, deserves a stringent punishment. The nature and circumstances of the offense, need for adequate deterrence weigh heavily in favor of United States' recommended sentence. The public and the financial system at-large deserve confidence in their institutions and the authorities responsible for that trust. The Court must protect the community from further crimes of the defendant while promoting respect for the law and providing deterrence.

WHEREFORE, the United States moves this Court to impose a sentence within the properly calculated Guideline range, specifically, 264 months imprisonment followed by a five-year term of supervised release.

Respectfully submitted,

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NOTICE OF ELECTRONIC FILING

I hereby certify that on August 14, 2024, I electronically filed the foregoing with the Clerk of the Court by using the CM/ECF system, which will send a notice of electronic filing to all counsel of record.

/s/ Aaron L. Smith
AARON L. SMITH
Assistant United States Attorney

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS**

THE UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
vs.)	Case No. 6:24-CR-10013-JWB
)	
SHAN HANES,)	
)	
Defendant.)	
)	

SENTENCING MEMORANDUM

Defendant, Shan Hanes, respectfully submits this memorandum in aid of sentencing in this case. He feels additional background information would be beneficial to the Court in determining the appropriate sentence herein. Mr. Hanes would respectfully request a downward variance from the advisory guideline range, or in the alternative the low advisory guideline number of 235 months.

INTRODUCTION

Personal History

As contained in the Presentence Investigation Report (“PSIR”), Mr. Hanes had a good childhood. Both his parents were supportive to him and his sister while growing up. At a young age Mr. Hanes developed a good work ethic by assisting his father on the farm, operating farm equipment by his third-grade year.

After graduation from high school, Mr. Hanes attend Northwestern Oklahoma State University (Alva, Oklahoma), obtaining a B.S. in Agri-Business and a minor in Economics. His overall GPA was 3.96, and a GPA of 4.0 in his major. Subsequent to graduation, Mr. Hanes attended three years of on campus education at the Graduate School of Banking in Boulder, Colorado.

Mr. Hanes and his wife Michelle have three girls, all now adults. During the children's youth, he actively assisted in the girls' upbringing, and was supportive with both their educational and youth activities, including being a USA Swim Referee/Official.

Mr. Hanes became employed at the First National Bank of Elkhart in 1993, starting as a Loan Officer and making his way to President. This bank was part of a three-bank holding company. Due to profitability issues in the original two banks, the majority owners decided in 2008 to split the original two banks and sell the First National Bank of Elkhart to pay off the holding company's debt. The longtime presidents of the original two banks remained as presidents after they were split apart.

Mr. Hanes was instrumental in forming the Elkhart Financial Corporation, which became the Holding Company for Heartland Tri-State Bank (HTSB), where he became the President. He ceased being the President of HTSB in July 2023 due to his actions, which are the basis of the charge herein.

From August 2023 through April 2024 Mr. Hanes worked for Globe Life/American Income Veteran Division marketing burial benefits in conjunction with benefits provided by the VA.

During his career, Mr. Hanes has received numerous honors and accomplishments:

1. Testified before both the US House and Senate committees and US Treasury concerning both rural and agriculture issues;
2. Served on multiple boards including American Bankers Association, and Chairman of the Kansas Bankers Association;
3. Served on local school board USD 218;
4. Served a two-year term on the CFPB Committee for Community Banks.

Crime of Conviction

Mr. Hanes stands before this Court convicted of one count of Embezzlement By A Bank Officer, a violation of 18 U.S.C. §656 (a class B felony) and 18 U.S.C. §2. Mr. Hanes entered his plea of guilty pursuant to a plea agreement on May 23, 2024.

SENTENCING STANDARDS

The role of a Sentencing Court is to first determine the Guideline range, and then evaluate a sentence in light of the factors in 18 U.S.C. §3553(a). The sentence should not be greater than what is necessary to comply with the purposes set forth in 18 U.S.C. §3553(a)(2).

These purposes are:

- (A) To reflect the seriousness of the offense, to promote respect for the law, and to provide just punishment for the offense;
- (B) To afford adequate deterrence to criminal conduct;
- (C) To protect the public from further crimes of the defendant;
- (D) To provide the defendant with needed educational or vocational training, medical care, or other treatment in the most effective manner;

The factors to be considered, pursuant to §3553(a) include:

- (1) The nature and circumstances of the offense and the history and characteristics of the defendant;
- (2) The need for the sentence imposed;
- (3) The kinds of sentences available;
- (4) The kinds of sentence and the sentencing range established for the applicable category of offense committed by the applicable category of defendant as set forth in the Guidelines;
- (5) Policy statements by the Sentencing Commission;

(6) The need to avoid unwarranted sentence disparities among defendants with similar records who have been found guilty of similar conduct;

(7) The need to provide restitution to the victims of the offense.

18 U.S.C. §3553(b) allows the Court to impose a sentence below the Guideline range if the Court finds there exist mitigating circumstances of a kind or degree, not adequately taken into consideration by the Sentencing Commission in formulating the Guidelines that should result in a sentence different from that described.

This Court knows the law regarding sentencing, and needs no lengthy briefing as to its current state. Mr. Hanes, would however, note that in *United States v. Booker*, 543 U.S. 220 (2005), the Supreme Court held that the United States Sentencing Guidelines (Guidelines) violated the Sixth Amendment when applied in the mandatory fashion called for by the statute by which they were created. By excising the statute which made the application of the Guidelines mandatory, and instead making their use advisory, the Court was able to preserve the structure of the Guidelines without violating the Sixth Amendment.

As a result of the holding in *Booker*, a sentencing analysis begins with the proposition that a sentence should be “sufficient, but not greater than necessary” in light of the factors set forth in 18 U.S.C. 3553. This statute directs the Court to consider the characteristics of the offense and of the offender. *Gall v. United States*, 552 U.S. 38 (2007); *Kimbrough v. United States*, 552 U.S. 85 (2007). Mr. Hanes concedes that this offense is a serious felony. However, the question remains what further punishment is “sufficient, but not greater than necessary” to adequately serve the statutory factors, as specifically applied to Mr. Hanes for his conduct giving rise to the charge herein.

I. Mr. Hanes has no prior criminal history.

Mr. Hanes's criminal history is 0 points (Category I). He has no prior criminal convictions. There is a current case pending in Morton County, Kansas District Court, which is based on the same acts and relevant conduct as this case.

II. Mr. Hanes accepted responsibility for his actions.

Mr. Mr. Hanes has accepted full responsibility for his actions. He answered questions from the FBI, produced documents, voluntarily surrendered his passport, and turned over cellular phones to be examined and searched. He waived an indictment and entered his plea to an Information. These actions saved the Government time and expenses.

Mr. Hanes understands that restitution will first go to the Stockholders and then to the FDIC. He wants to be able to make payments towards the restitution. His efforts to repay the loss is demonstrated by his repayment of the \$40,000.00 taken from the Elkhart Church of Christ and the \$10,000.00 taken from the Santa Fe Investment Club prior to the filing of this case. These losses were referenced in the PSIR.

III. Mr. Hanes did not retain any financial gain by way of his actions.

Mr. Hanes does not in any way deny what he did was wrong, but as the Court perceived at the Plea Hearing, Mr. Hanes fell victim to a cryptocurrency scam called Pig Butchering. Falling victim to this scam does not excuse the illegal actions taken by Mr. Hanes in wrongfully taking money from the bank, resulting in the bank's failure and the loss to the Stockholders. However, this is what precipitated those actions.

Mr. Hanes is sorry about the loss he caused to the community and specifically the Stockholders of the Elkhart Financial Corporation. These people were his friends, co-workers, and neighbors, and all that he can do at this point is try to pay back the restitution upon his release from prison.

Mr. Hanes believes it is important for the Court to be advised that he did not benefit financially from his actions and actually lost some of his own funds. He advised the FBI that through the cryptocurrency scam he lost:

- A. Approximately \$60,000.00 taken from daughter's college fund;
- B. Approximately \$30,000.00 from his Savings Account at the Bank of the Panhandle;
- C. Approximately \$5,000.00 from his personal account at Hartland Tristate Bank;
- D. Over \$100,000.00 in personal loan proceeds;
- E. \$964,080.88 in stock from the Elkhart Financial Corporation;

These amounts total more than a \$1,159,080.88 loss.

IV. The pending Kansas case will impose additional incarceration.

Currently Mr. Hanes is facing a 28 count Complaint in Morton County Kansas District Court. The basis for those charges is basically the same relevant conduct giving rise to the charge herein. Mr. Hanes has been advised that the County Attorney will be seeking a prison sentence and will request that it run consecutive to any sentence imposed in this case. The potential sentence in that case would be 86 months (7.2 years). If granted the 15% goodtime, the sentence would be reduced to 73.1 months (6.1 years).

V. A lower sentence increases the opportunity to repay restitution.

Mr. Hanes will be 53 at the time of his Sentencing in this case. The Guideline range is 235 months to 293 months (19.5 years to 24.4 years). Assuming he receives the 15% goodtime, his actual incarceration would be 199.75 months to 249.05 months (16.65 years to 20.75 years). This will make Mr. Hanes 69.65 years old to 73.75 years old at the time he is released. The CDC in 2022 estimated a 65-year-old male would die around 77.5 years old.

Mr. Hanes is younger and in good health, and it is hoped he will live into his 80s, but employability becomes very restricted for seniors looking for employment and health can take a quick turn as a person ages.

The Stockholder statements overall have a few things in common. While most request a long sentence, the majority agree that Mr. Hanes is one of the smartest people they had ever met, had helped them in the past, and would never have expected him to take money from the bank.

Repayment of some restitution to the Stockholders is possible if Mr. Hanes is released at an age that will allow him to get meaningful employment. As demonstrated by his past, Mr. Hanes is a hard worker and has generally excelled in the tasks assigned.

As set out above, the State of Kansas is seeking additional incarceration of 7.2 years (6.12 after goodtime). When added to the low Guideline number, assuming goodtime in each case, the combined sentence would be 22.75 years. This would make Mr. Hanes 75.75 years old at the time of his release, which would seriously decrease his ability to repay the restitution.

VI. Disparity in White-Collar crime sentencing should be considered.

The Guideline range in this case appears to be greater than other White-Collar crime cases, and Mr. Hanes acknowledges that may be due to the amount of loss in his case. He would respectfully request the Court to consider the recent Sentencing of Janet Yamanaka Mello from the Western District of Texas. In a press release dated July 23, 2024, from the U.S. Attorney's Office, Western District of Texas, it stated that Ms. Mello received a 16 year sentence for stealing over \$108,000,000.00 in a fraud scheme against the United States Army. The amount of loss in that case is approximately twice the loss attributed to Mr. Hanes. It was alleged that Ms. Mello used the funds on clothing, jewelry, vehicles, and real estate. It is

believed that Ms. Mello was charged with five counts of Mail Fraud, four counts of Engaging in a Monetary Transaction over \$10,000.00, and one count Aggravated Identity Theft.

CONCLUSION

Mr. Hanes made some very bad choices after being caught up in an extremely well-run cryptocurrency scam. He was the pig that was butchered. He has no prior criminal history, and up until this point has been a well-respected person in the community. For years he served and advised bank patrons in a beneficial manner, assisting with loans and investments. Mr. Hanes has always been a hard worker. He has always been able to find good employment and has excelled in his job.

Mr. Hanes's vulnerability to the Pig Butcher scheme caused him to make some very bad decisions, for which he is truly sorry for causing damage to the bank and loss to the Stockholders. However, an extended prison sentence only decreases the amount of restitution that can be returned to the Stockholders. The PSIR estimates the annual cost of housing Mr. Hanes in prison to be \$49,770.00. A 20-year sentence will cost the government approximately \$995,400.00.

Mr. Hanes would respectfully request the Court grant a downward variance, or at least the low guideline number to allow him a longer opportunity to pay towards the restitution herein.

Respectfully submitted,

HULNICK, STANG, GERING & LEAVITT, P.A.

/s/ John E. Stang

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CERTIFICATE OF SERVICE

I hereby certify that on the 6th day of August, 2024, I electronically filed the foregoing Sentencing Memorandum with the Clerk of the Court by using the CM/ECF system which will send a notice of electronic filing to the following: Aaron Smith Aaron.Smith3@usdoj.gov

/s/ John E. Stang

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