

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

Criminal Case No. 16-cr-00073-CMA

UNITED STATES OF AMERICA,

Plaintiff,

v.

1. JASON TIMOTHY THRONE,

Defendant.

GOVERNMENT’S OBJECTION TO PRESENTENCE INVESTIGATION REPORT

The United States of America, by and through Assistant United States Attorney Thomas M. O'Rourke, submits the following objection to the Presentence Investigation Report that the Probation Office has prepared for the sentencing of the defendant Jason Throne.

Throne has pleaded guilty to two counts of an Information. Doc. 13. Count 1 charges mail fraud, and Count 2 alleges the defendant willfully made and subscribed a false tax return. Doc. 1 at 1-4. The sentencing hearing has been scheduled for July 13, 2016. Doc. 13.

The Probation Office recommended that the defendant’s offense level for Count 1 be increased by two levels because Throne “abused a position of trust and used a special skill (attorney) in a manner that significantly facilitated the commission or concealment of the offense.” Doc. 17 at 8 (¶ 41). The government disagrees.

Through the scheme charged in Count 1, the defendant defrauded his employer, Hunter Douglas Inc. The company employed Throne as an attorney and permitted him to work from home, but those are not the factors that allowed him to carry out the scheme. He was able to defraud Hunter Douglas because he created a sham corporation, rented a mail box, and printed, mailed and signed fake invoices. He could have done the same in a non-lawyer position working in a company office. Throne undoubtedly was a trusted employee, but that was not a significant factor in the commission or concealment of the fraud. U.S.S.G. § 3B1.3, comment. (n. 1). As the Tenth Circuit has said, “In every successful fraud the defendant will have created confidence and trust in the victim, but the sentencing enhancement is not intended to apply in every case of fraud.” *United States v. Koehn*, 74 F.3d 199, 201 (10th Cir. 1996).

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on this 10th day of June 2016, I electronically filed the foregoing GOVERNMENT'S OBJECTION TO PRESENTENCE INVESTIGATION REPORT with the Clerk of the Court using the CM/ECF system, which will send a copy of such filing to the following e-mail address:

John Henry Schlie, Esq.
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s/ Dee Boucher _____
United States Attorney's Office