

NOT RECOMMENDED FOR FULL-TEXT PUBLICATION

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No. 05-1028

**UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT**

UNITED STATES OF AMERICA,)	
)	
Plaintiff-Appellee,)	
)	ON APPEAL FROM THE UNITED
v.)	STATES DISTRICT COURT FOR THE
)	WESTERN DISTRICT OF MICHIGAN
PAUL MICHAEL SEDORE,)	
)	
Defendant-Appellant.)	

Before: SUHRHEINRICH, ROGERS and COOK, Circuit Judges.

PER CURIAM. Paul Michael Sedore appeals his sentence for identity theft in violation of 18 U.S.C. § 1028(a)(7) and defrauding the Internal Revenue Service (IRS) in violation of 18 U.S.C. § 286. We vacate the sentence and remand the case for re-sentencing under the now-advisory provisions of the U.S. Sentencing Guidelines, and the factors identified in 18 U.S.C. § 3553(a), in accordance with *United States v. Booker*, 543 U.S. 220 (2005). We also provide guidance regarding the application of certain Guidelines provisions Sedore challenges with this appeal.

First, in determining whether Sedore abused a position of trust under U.S.S.G. § 3B1.3, the district court may reevaluate whether Sedore occupied a position of trust, reassessing who qualifies as a victim within the meaning of U.S.S.G. § 2B1.1 cmt n.1—the IRS and/or the individuals whose personal information Sedore used for his scheme. See *United States v. Guidry*, 199 F.3d 1150, 1160

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(10th Cir. 1999) (holding that a “position of trust must be found in relation to the victim of the offense” and concluding that, although the government was the victim of the defendant’s false tax-return filings, the defendant did not occupy a position of trust with the government).

Second, the district court may reexamine its decision to enhance Sedore’s sentence for obstruction of justice under U.S.S.G. § 3C1.1 by determining whether Sedore acted “with knowledge that he . . . [was] the subject of an investigation or with the correct belief that an investigation [of him] [was] probably underway.” *United States v. Brown*, 237 F.3d 625, 628 (6th Cir. 2001) (internal quotations omitted); *accord United States v. Baggett*, 342 F.3d 536, 541 (6th Cir. 2003) (“[A] defendant who engages in obstructive conduct prior to the investigation, prosecution, or sentencing of the instant offense is not subject to the enhancement.”).

The sentence is vacated and the case is remanded to the district court for re-sentencing.