

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CRIMINAL MINUTES - GENERAL

Case No. SACR 08-00336-JVS Date March 11, 2013

Present: The Honorable James V. Selna

Interpreter Not Needed

Karla J. Tunis	Sharon Seffens	Douglas McCormick
<i>Deputy Clerk</i>	<i>Court Reporter.</i>	<i>Assistant U.S. Attorney</i>

<u>U.S.A. v. Defendant(s):</u>	<u>Present</u>	<u>Cust.</u>	<u>Bond</u>	<u>Attorneys for Defendants:</u>	<u>Present</u>	<u>App.</u>	<u>Ret.</u>
Mario Covino	X		X	Janet Levine	X		X

Proceedings: **SENTENCING** - **Non-Evidentiary**

Cause called and counsel make their appearances. The Court tentative sentencing memorandum is issued. Counsel make their arguments regarding sentencing. The defendant addresses the Court. The Court sentences the defendant (Refer to separate Judgment Order) in accordance with its revised sentencing memorandum (attached hereto).

cc: USPO
PSA

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 Initials of Deputy Clerk kjt

UNITED STATES DISTRICT COURT
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United States v. Covino, Case No. CR 08-336 JVS

Sentencing Memorandum

This matter is before the Court for sentencing defendant Mario Covino (“Covino”) on his plea to Count 1 of the Information for violation of 18 U.S.C. § 371, conspiracy to make unlawful payments under the Foreign Corrupt Practices Act, 15 U.S.C. § 78dd-2(a). In arriving at a reasonable sentence as instructed by United States v. Booker, 543 U.S. 220 (2005), the Court has taken into consideration the United States Sentencing Commission Guidelines, the policies of the Sentencing Reform Act of 1984, 18 U.S.C. § 3553(a), and the specific facts of this case. The Court has reviewed the Presentence Report (“PSR”) and the parties’ submissions. As set forth below, the Court finds that a sentence 3 years probation with 3 months home detention and a \$7,500 fine represents a reasonable sentence in light of all of these factors.

1. Sentencing Guidelines.¹ The Court adopts in part the Guidelines analysis of the PSR.

1.1. Offense Level. The Court concurs that the applicable guideline is Section 2X1.1(a), which looks to the substantive offense underlying the conspiracy. Section 2C1.1(a)(2), the applicable Foreign Corrupt Practices Act guideline, provides a base offense level of 12. Several enhancements are required: a 2-level enhancement because there were multiple bribes, U.S.S.G. § 2C1.1(b)(1), and an 18-level enhancement based on the profits (in excess of \$5 million) which resulted from the bribes which he authorized, U.S.S.G. § 2C1.1(b)(2), incorporating § 2B1.1(b)(1)(J). Covino is entitled to a 3-level reduction for accepting responsibility. U.S.S.G. §§ 3E1.1(a), (b). The Court finds that the record establishes by a preponderance of the evidence the basis for each enhancement and the reduction. The adjusted offense level is 29.²

1.2. Criminal History. The Court concurs that the defendant’s Criminal History Category is I, based on the absence of any Criminal History points.

1.3. Departures. The Court acknowledges that it has discretion to depart from the

¹Although the Court considers the Guidelines first, the Court is mindful that the Guidelines are only the starting point in crafting a reasonable sentence. Gall v. United States, 552 U.S. 38, 49 (2007); United States v. Carty, 520 F.3d 984, 991 (9th Cir. 2008); United States v. Cantrell, 433 F.3d 1269, 1280 (9th Cir. 2006). There is no presumption in this Court that a Guidelines sentence should apply. Nelson v. United States, 555 U.S. 350, 352 (2008) (*per curiam*); Rita v. United States, 551 U.S. 338, 351 (2007); Carty, 520 F.3d at 994.

²Although the Plea Agreement included a 3-level enhancement based on Covino’s major role, the Government now agrees with the Probation Officer that such an enhancement should not be applied given that the enhancement was not applied to other officers who were equally or more culpable than Covino. (See Government’s Sentencing Position, pp. 2-3.)

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sentence which results from an application of the Guidelines, and finds that the Government's motion for a reduction based on Covino's cooperation provides a basis for exercising that discretion. The Government's showing meets the 5-fold requirements of Section 5K1.1 of the Guidelines. (Government's Sentencing Position, pp. 3-5.) As the first person to plead, his cooperation provided the Government a "first-hand" view of how Control Component, Inc.'s ("CCI") bribery scheme worked. (*Id.*, p. 4.) As Paul Cosgrove's right hand-man, he was well positioned and to explain CCI's incriminating internal documents. He was expected to be a key trial witness. (*Id.*) The Court agrees that Covino's cooperation warrants a 10-level departure. Given that the statutory maximum for the offense is 60 months, the Government uses level 24 for the starting point for its recommended departure (offense level 14/Criminal History Category I). The Court agrees.³

1.4. Conclusion. The Court finds that proper application of the Guidelines calls for a sentence of imprisonment for 15-21 months and a fine of \$6,000 to \$60,000.

2. Sentencing Reform Act. In arriving at a reasonable sentence, the Court considers the following factors outlined in the Sentencing Reform Act.

2.1. Nature of Circumstances of the Offense and History and Characteristics of Defendant. As the Supreme Court observed in Gall v. United States, 552 U.S. 38, 52 (2007) (internal quotation marks deleted), "the sentencing judge consider[s] every convicted person as an individual and every case as a unique study in the human failings that sometimes mitigate, sometimes magnify, the crime and the punishment to ensue."

Covino served as CCI's Director of Worldwide Factory Sales from 2003 to 2007. (PSR, ¶ 24.) The crux of the bribery scheme was to cultivate "friends in camp" ("FICs") who were insiders at customers or who could otherwise influence customers to steer business to CCI by various means, including tailoring bid specifications. FICs were rewarded with payments (some times referred to as "flowers") and in some cases extravagant travel. He was instrumental in causing over \$1,000,000 in "commission" payments used as subterfuges for bribes which returned over \$5 million in profits for CCI. (PSR, ¶ 29.)

In 1995, he completed a 5-year degree program in electrical engineering at the University of Rome La Sapienza. (PSR, ¶ 73.) He is a licensed professional engineer in Italy. (PSR, ¶ 74.)

³Alternatively, the Court would adopt a greater variance such that the overall analysis would place Covino in a zone where probation is permitted. (See Section 2.7, *infra*.)

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He was born in Naples, Italy, and came to the United States briefly in 1998. He returned to the United States in 2002, and has resided in Irvine, California since then.

Covino was raised in a close, middle-class family in Italy. (PSR, ¶ 64.) His father worked as an electrical engineer; his mother remained at home.

He married in 1996, and has four children. (PSR, ¶ 65.)

From 1996 to 2002, he held engineering positions in Italy. (PSR, ¶ 79-80.) Covino was employed at CCI from 2002 to 2007. He was making about \$175,000 year when he was terminated. (PSR, ¶ 78.) Since 2009, he has worked for Fagioli, Inc. in Manvel, Texas as a health, safety, and environmental quality assurance manager. (PSR, ¶ 75.)

With a net worth in excess of \$67,000, Covino has the ability to pay a fine. (PSR, ¶ 84.)

He is residing legally in the United States as a legal permanent resident. (PSR, ¶ 67.)

2.2. Need for Sentence to Reflect Seriousness of Offense, to Promote Respect for Law, and to Provide Just Punishment. The Court finds that the Guidelines analysis has taken into account this factor.⁴

2.3. Need to Afford Adequate Deterrence of Criminal Conduct. The Court finds that the Guidelines analysis has taken into account this factor.

2.4. Need to Protect the Public. The Court finds that the Guidelines analysis has taken into account this factor.

2.5. Need to Provide Defendant Individualized Service Needs. This is not a factor in this case.

⁴The crime here is in the “mine run of roughly similar . . . cases,” and the Court finds that with respect to this factor, the “Guidelines sentence is a proper sentence (in terms of § 3553(a) and other congressional mandates) in the typical case.” Rita v. United States, 551 U.S. at 357, 359. Where the parties do not argue to the contrary, “the judge normally need say no more.” (Id. at 357.) As the Ninth Circuit has recently elaborated: “A within-Guidelines sentence ordinarily needs little explanation unless a party has requested a specific departure, argued that a different sentence is otherwise warranted, or challenged the Guidelines calculation itself as contrary to § 3553(a).” Carty, 520 F.3d at 992.

The Court does not mean that the Guidelines analysis overrides the factors in Section 3553(a), but rather that the Court will consider the same facts only once unless the facts have additional or different significance under a Section 3553(a) analysis or render the case atypical. The Court has noted where this is the case. United States v. Mix, 450 F.3d 375, 382 (9th Cir. 2006).

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2.6. Kinds of Sentences Available. Under the terms of the advisory Guidelines, a sentence falling within Zone D must include a term on imprisonment equivalent to the low end of the Guidelines range (15 months). U.S.S.G. § 5C1.1(f). The Court, of course, acknowledges that this directive, as well as all others in the Guidelines, is merely advisory.

2.7. Facts of the Case. There are additional facts which the Guidelines analysis and the other factors in Section 3553(a) have not taken into account in type or degree. The Court agrees with both the Government and the Probation Officer that a custodial sentence here would be disparate. For example, David Edmunds pled out only weeks before trial and received a split sentence of 4 months imprisonment and 4 months home detention. (Case No. SACR 09-77, Docket No. 929.) The Court sentenced Hong Carson to probation and 6 months home detention. (Id., Docket No. 913.) Moreover, the Court agrees that Covino's acceptance of responsibility was exceptional. On this basis, the Court adopts a 3-level variance which places Covino in Zone B.

2.8. 2.7. Sufficiency of Punishment. The Court finds that a sentence of 3 years probation, which includes 3 months of home detention, and a \$7,500⁵ fine is sufficient but no more than necessary to meet the goals of the Sentencing Reform Act, including specifically punishment and deterrence. Kimbrough v. United States, 552 U.S. 85. 110-11 (2007).

Covino urges that a fine only, of \$10,000, be imposed. (Covino's Position, pp. 1, 10.) A straight fine would ignore the extent of his participation in the scheme. The Court feels that the goals of deterrence and recognition of the seriousness of the crime require a liberty-restricting component in the sentence. Three months home detention is a modest, but important component of the overall sentence. Should Covino promptly pay his fine and serve the first 18 months of probation without incident, the Court would consider early termination of probation.

4. Conclusion. In setting this sentence, the Court has taken into account that it has discretion under both the Guidelines and Booker. As noted above, the Court has exercised its discretion under both the Guidelines and Booker, but in adopting the present sentence, the Court is mindful that whether a sentence falls within or without the Guideline range, the Court's ultimate decision is a reflection of its discretion. The Court finds that taking into account the analysis mandated by Booker, a sentence of 3 years probation with 3 months home detention and a \$7,500 fine represents a reasonable sentence.

⁵This is less than the fine recommended by the Probation Officer, but more proportional to the fine imposed on co-schemer Richard Morlok in view of their relative financial conditions.