

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CRIMINAL MINUTES - GENERAL

Case No. SACR 09-00005-JVS Date March 11, 2013

Present: The Honorable James V. Selna

Interpreter Not Needed

<u>Karla J. Tunis</u>	<u>Sharon Seffens</u>	<u>Douglas McCormick</u>
<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>
Richard Morlok	X		X	Whitney Ellerman	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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United States v. Morlok, Case No. SACR 09-05 JVS

Sentencing Memorandum

This matter is before the Court for sentencing defendant Richard Morlok (“Morlok”) 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 \$5,000 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). Morlok 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 Morlok’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 Morlok. (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 Morlok'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 second person to plead, his cooperation provided the Government's prosecution "critical support," including "a compelling narrative for the e-mails and other documents that indicated improper payments." (*Id.*, p 4.) He was expected to be a key trial witness. (*Id.*, pp. 4-5.) The Court agrees that Morlok'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."

Morlok served as CCI's Director of Finance from 2002 to 2007. (PSR, ¶ 23.) 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 approving over \$600,000 in "commission" payments used as subterfuges for bribes which returned over \$3.5 million in profits for CCI. (PSR, ¶¶ 29. 41.)

While Morlok became suspicious of the program, he nevertheless continued authorizing payments. (Defendant's Memorandum, pp. 6-7.)

Morlok had a normal childhood with no abuse or other incidents. (PSR, ¶ 64.) He grew up in a two-parent, working-class family in Orange, California.

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

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He was married in 1983, and divorced. He subsequently remarried, and has two children from that marriage in addition to a child from his first marriage. (PSR, ¶¶ 65-66.)

He graduated from California State University, Fullerton in 1973 with a bachelor's degree in business administration. (PSR, ¶ 73.) He has specialized training through his church as a lay counselor. (PSR, ¶ 74.)

Morlok was employed at CCI from 1993 to August 2008. When he left, he was making \$175,000 a year. (PSR, ¶ 78.) Since 2009, he has worked from home as a self-employed medical biller. (PSR, ¶ 75.)

With a net worth in excess of \$300,000, Morlok has the ability to pay a fine. (PSR, ¶ 82.)

The Court notes Morlok's charitable and volunteer activities in recent years. (Defendant's Memorandum, pp. 13-14.)

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 Morlok's acceptance of responsibility was exceptional. On this basis, the Court adopts a 3-level variance which places Morlok 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 \$5,000 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).

Morlok urges a sentence of 1 year probation only. (Defendant's Memorandum, pp. 1, 17.) A 1-year term of probation 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. Moreover, Morlok clearly has the ability to pay a fine. In considering his position vis-à-vis the Carson⁵ defendants, the Court finds that a fine of \$20,000 was excessive, and thus has not adopted the recommendation of the Probation Officer. Nevertheless, a fine is appropriate. Should Morlok 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 \$5,000 fine represents a reasonable sentence.

⁵United States v. Carson, SACR 09-77 JVS