

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

CRIMINAL MINUTES - GENERAL

Case No. SACR 09-00077-JVS Date September 13, 2012

Present: The Honorable James V. Selna

Interpreter Not Needed

Karla J. Tunis

Sharon Seffens

Douglas McCormick / Charles LaBella  
Andrew Gentin, DOF

*Deputy Clerk*

*Court Reporter.*

*Assistant U.S. Attorney*

<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>
--------------------------------	----------------	--------------	-------------	----------------------------------	----------------	-------------	-------------

<b>3. Paul Cosgrove</b>	<b>X</b>		<b>X</b>	<b>Thomas Bienert</b>	<b>X</b>		<b>X</b>
				<b>Teresa Alarcon</b>	<b>X</b>		<b>X</b>

**Proceedings:** SENTENCING - NON EVIDENTIARY

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

cc: USPO  
PSA

0 : 32

Initials of Deputy Clerk kjt

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

CRIMINAL MINUTES - GENERAL

United States v. Cosgrove, Case No. SACR 09-77 JVS

Sentencing Memorandum

This matter is before the Court for sentencing defendant Paul Cosgrove (“Cosgrove”) on his plea to Count 1 of the Superseding Information for violation of 15 U.S.C. § 78dd-2, the Foreign Corrupt Practices Act. 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 of 3 years probation, which includes 13 months home detention, and a fine of \$20,000 represents a reasonable sentence in light of all of these factors.

1. Sentencing Guidelines.<sup>1</sup> The Court adopts the Guidelines analysis of the PSR.

1.1. Offense Level. The Court concurs the applicable guideline is Section 2C1.1 which provides for a base offense level of 12. A 2-level enhancement is required based on the amount of the bribe, \$7,500. Cosgrove is entitled to a 2-level reduction for accepting responsibility. U.S.S.G. § 3E1.1(a). The adjusted offense level is 12.

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. He has a DUI conviction which was not scored because of age. (PSR, ¶ 78.)

1.3. Departures. The Court acknowledges that it has discretion to depart from the sentence which results from the application of the Guidelines. The Court finds that there is no basis for a departure in this case.

Both the Probation Officer and Cosgrove suggest that a departure based on

---

<sup>1</sup>Although 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 (9<sup>th</sup> Cir. 2008); United States v. Cantrell, 433 F.3d 1269, 1280 (9<sup>th</sup> 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.

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

CRIMINAL MINUTES - GENERAL

Cosgrove's age and medical condition would be proper under Sections 5H1.1 and 5H1.4. (Probation Officer Letter, pp. 3-4; Sentencing Memorandum, pp. 3-6.) The Court is not convinced that his medical condition amounts to "an extreme physical impairment." U.S.S.G. § 5H1.4. However, these are clearly proper considerations in sentencing, and the Court discusses them below in adopting a Booker variance. (See Section 2.7, infra.)

1.4. Conclusion. The Court finds that proper application of the Guidelines calls for a sentence of imprisonment for 10-16 months and a fine of \$3,000 to \$30,000.

2. 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."

Cosgrove pled guilty to failing to adequately investigate a payment to Sichuan Chemical Works Group, Ltd. which he authorized but which was in fact a bribe in violation of the Foreign Corrupt Practices Act. The amount of the payment was \$7,500. He was the head of the World Wide Sales Department of Control Components Inc. ("CCI").

In 2009, CCI pled guilty to violations of the Foreign Corrupt Practices Act, and paid a fine of \$18.2 million. (PSR, ¶ 11.) CCI admitted to more than \$6 million in bribes

Cosgrove's business model was to develop "friend in camp," or FICs: influential individuals at target customers who would steer major contracts to CCI in exchange for bribes or other benefits such as travel and lavish entertainment.<sup>2</sup>

Cosgrove is age 65, and as discussed below has extensive medical problems.

He grew up in a middle-class family in Boston.

Cosgrove was married and divorced, and has one adult child from the marriage. He remarried in 1991. He has lived in the same residence for the past 20 years.

---

<sup>2</sup>The Court acknowledges that within CCI, the term FIC included others besides recipients of bribes or conduits for the payment of bribes.

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

CRIMINAL MINUTES - GENERAL

He graduated from high school, and attended some college. (PSR, ¶ 98.)

Cosgrove has spent the bulk of his working career with just two firms: Masoneilan, a Houston-based valve manufacturer, and CCI. His 16-year employment at CCI was terminated in 2007 when the company began to investigate allegations of illegal practices. (PSR, ¶ 100.)

He has a net worth in excess of \$3.3 million, and is able to pay a fine. (PSR, ¶ 105.)

The Court notes the many favorable letters submitted by family members, friends, and past business acquaintances. (Alarcon Decl., Ex. F.)

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.<sup>3</sup>

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. In adopting a Booker variance in order to impose home detention rather than imprisonment, the Court takes into account Cosgrove's extensive medical needs.

2.6. Kinds of Sentences Available.

Under the terms of the advisory Guidelines, where a sentence falls within Zone C,

---

<sup>3</sup>The 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 § 3353(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 (9<sup>th</sup> Cir. 2006).

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

CRIMINAL MINUTES - GENERAL

the Court may impose a term of imprisonment equivalent to the low-end of the Guideline range, but may also provide that half the minimum term be served through home detention or a term in community confinement. U.S.S.G. § 5C1.1(d). The Court, of course, acknowledges that this directive, as well as all others in the Guidelines, is merely advisory, as the Court demonstrates with the sentence which it adopts.

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.

Cosgrove has an extensive history of medical problems, and had quadruple bypass heart surgery in 2010. He has been hospitalized twice in the past four months for conditions related to his heart ailments. (Alarcon Decl., Ex. E.) In addition to his heart condition, he suffers from sleep apnea and borderline Type II diabetes. He takes an extensive complement of medications each day and undergoes twice daily monitoring at home. (*Id.*, Ex. C.) His medical needs would clearly be better met through home detention which would permit him to continue with his own doctors and own medications.<sup>4</sup>

The Court adopts a Booker variance for the purpose of varying the type of sentence imposed, probation with home detention.

2.8. Sufficiency of Punishment. The Court finds that a sentence of 3 years probation, which includes home detention equivalent to a mid-range Guidelines sentence of 13 months, with a fine of \$20,000, is sufficient but no more than necessary to meet the goals of the Sentencing Reform Act, including specifically punishment and the recognition of the seriousness of the crime. Kimbrough v. United States, 552 U.S. 85. 110-11 (2007).

Despite the extent of the overall scheme, imprisonment is not warranted in this case. Deterrence does not require it, and recidivism is highly unlikely given that Cosgrove's professional career has come to an end. Home detention will better serve all the goals of the Sentencing Reform Act, including especially the needs of the defendant. However, absent the medical considerations present here, the Court would feel compelled to impose a sentence of imprisonment.

3. 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 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

---

<sup>4</sup>And, Cosgrove points out, at less expense to the taxpayers. (Sentencing Memorandum, p. 5.)

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

CRIMINAL MINUTES - GENERAL

reflection of its discretion. The Court finds that taking into account the analysis mandated by Booker, a sentence of 3 years probation, which includes 13 months home detention, and a fine of \$20,000 represents a reasonable sentence.