

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

CRIMINAL MINUTES - GENERAL

Case No. SACR 09-00077-JVS Date November 5, 2012

Present: The Honorable James V. Selna

Interpreter Mandarin Interpreter: Judith Kieda

Karla J. Tunis <i>Deputy Clerk</i>	Sharon Seffens <i>Court Reporter.</i>	Douglas McCormick / Charles LaBella Andrew Gentin, DOF <i>Assistant U.S. Attorney</i>
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<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>2. Hong Carson</b>	<b>X</b>		<b>X</b>	<b>Kimberly A. Dunne</b>	<b>X</b>		<b>X</b>
				<b>Andrew Dunbar</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 submit on the Court’s tentative sentencing memorandum. The Court sentences the defendant (Refer to separate Judgment Order) in accordance with its sentencing memorandum (attached hereto) .

cc: USPO  
PSA

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 Initials of Deputy Clerk kjt

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United States v. H. Carson, Case No. SACR 09-00077 JVS

Sentencing Memorandum

This matter is before the Court for sentencing defendant Hong Carson (“H. Carson”) on her plea to Count 1 of the separate Superseding Information, in which she is solely named, for violation of 15 U.S.C. § 78dd-2, unlawful payments in violation of 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 6 months home detention with a fine of \$20,000 represents a reasonable sentence in light of all of these factors.<sup>1</sup>

1. Sentencing Guidelines.<sup>2</sup> The Court adopts the Guidelines analysis of the PSR.

1.1. Offense Level.<sup>3</sup> The Court concurs that the applicable guideline is Section 2B4.1(a) which provides a base offense level of 8. A 6-level enhancement based on the amount of the bribe in issue (\$40,000) is applicable. U.S.S.G. § 2B1.1(b)(1)(D). H. Carson is entitled to a 2-level reduction for accepting responsibility. U.S.S.G. § 3E1.1(a). The Court finds that the record establishes by a preponderance of the evidence the basis for the enhancement and the reduction. 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.

1.3. Departures. The Court acknowledges that it has discretion to depart from the sentence which results from an application of the Guidelines. The Court finds that there is no

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<sup>1</sup>Although H. Carson’s plea is part of package deal with her husband Stuart Carson (Plea Agreement, ¶ 2), the Court has analyzed each stipulated sentence independently in coming to its conclusion that the sentence imposed is reasonable.

<sup>2</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.

<sup>3</sup>Because of *ex post facto* considerations, the Probation Office has used the November 1, 2001 Guidelines. (PSR, ¶ 35.)

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basis for a departure here. The Court notes that the Government discusses H. Carson's cooperation in support of its recommended variance. (Government's Sentencing Position, pp. 2-3.)

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. 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."

H. Carson pled to a single bribery transaction involving the Kuosheng Nuclear Power Plant, owned by the Taiwan government. (PSR, ¶¶ 2, 39.) However, the scope of violations of the Foreign Corrupt Practice Act with which she was involved during her tenure at Control Components, Inc. ("CCI") was far more extensive. In a separate indictment, CCI admitted to bribes in excess of \$6 million and paid a fine of \$18.2 million. (PSR, ¶ 13; United States v. Control Components, Inc., SACR 09-162 JVS.) The crux on the 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. H. Carson had only regional responsibilities; thus, her participation was narrower than that of co-defendants Paul Cosgrove ("Cosgrove") and Stuart Carson ("S. Carson") who were major architects of the program.

She was born and educated in the People's Republic of China. She holds a bachelor of arts degree in foreign trade and economics from the University of China Society. (PSR, ¶ 92.) Her parents were high ranking Communist officials.

H. Hong came to the United States when she was 26, and is today a naturalized citizen. (PSR, ¶¶ 79-80.)

She is married to S. Carson, and has 3 children, ages 13, 18, and 20.

She worked for CCI from 1995 to 2007. She was eventually responsible for sales

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in Taiwan and mainland China. (PSR, ¶ 95.) Since January 2008, she has had the same regional responsibilities for another valve manufacturer, Valvtechnologies. (PSR, ¶ 94.)

H. Carson has a net worth in excess of \$6 million and a positive monthly cash flow of nearly \$40,000.<sup>4</sup> (PSR, ¶ 99.)

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>5</sup>

2.3. Need to Afford Adequate Deterrence of Criminal Conduct. The Court finds that the Guidelines analysis has taken into account this factor. The Court specifically finds that some form of liberty-restricting sentence is necessary to meet this goal.

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.

2.6. Kinds of Sentences Available. Under the terms of the advisory Guidelines, where a sentence falls within Zone C, the Court may impose a term of imprisonment equivalent to the low-end of the Guideline, 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.

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<sup>4</sup>This appears to reflect H. Carson and S. Carson's combined assets and income.

<sup>5</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 § 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 (9<sup>th</sup> Cir. 2006).

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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. As part of the Plea Agreement (Plea Agreement, ¶ 17), the Government agreed to a 2-level variance.

The Court does not find that H. Carson's family considerations warrant a variance. Her youngest child is 13, and the family appears to have substantial means for meeting the family's and the children's needs. The children have no special, psychological, or otherwise unusual needs.

The Court also does not give credit to the fact that she was educated in China, and has spent her career in a business environment that at a minimum raises potential conflicts with the Foreign Corrupt Practices Act. There is no cultural defense to the present crime or any other under black letter law.

The Court does credit her willingness to testify against the defendants who remained when she entered her plea, Cosgrove and David Edmonds. The Court also takes into account the strength of the Government's case had the matter gone to trial. While the Court found no legal impediment to the prosecution in the face of numerous legal challenges, the ultimate outcome of a number of issues on appeal was uncertain to a greater or lesser degree.

The Court believes that a 2-level variance is warranted on the totality of the facts here: Offense level 10/Criminal History Category I (6-12 months).<sup>6</sup>

2.8. Sufficiency of Punishment. The Court finds that a sentence of 3 years probation which includes 6 months home detention with a fine of \$20,000 is sufficient but no more than necessary to meet the goals of the Sentencing Reform Act, including specifically deterrence and recognition of the seriousness of the crime. Kimbrough v. United States, 552 U.S. 85, 110-11 (2007). The Court finds that H. Carson has the ability to pay a fine. (PSR, ¶ 99.)

A straight probationary sentence would ignore the magnitude to the scheme here, and while H. Carson's role was regional, she was involved in many other transactions.

3. Objections to PSR. H. Carson objects to certain statements in the PSR. None of the statements affects the Court's sentencing decision, and the Court disregards them.

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<sup>6</sup>The variance places H. Carson in Zone B where a sentence of probation plus home detention is within the Guidelines. U.S.S.G. § 5C1.1(c).

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4. Term of Probation and Supervised Release. The Court agrees with H. Carson and the Government that while on probation and home detention, she should be allowed the same travel as while on pretrial release, even though foreign travel may be outside the Probation Office's usual policy.<sup>7</sup> While on home detention, she may leave the residence for work as noted, medical needs for herself and her family, and religious services once a week. The Court recommends that the term of home detention be served either before or after S. Carson serves his term of imprisonment so that one parent is available to meet the children's school activities, shopping, and other activities.

5. 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 reflection of its discretion. The Court finds that taking into account the analysis mandated by Booker, a sentence of 3 years probation with 6 months home detention with a fine of \$20,000 represents a reasonable sentence.

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<sup>7</sup>Given the Carsons' financial condition and S. Carson's consulting activities, query whether these accommodations are necessary to support the family rather serve as a means to allow H. Carson to be a productive citizen who will continue to use her skills. (H. Carson Sentencing Position, p. 6.)