

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 Not Needed

Karla J. Tunis

Deputy Clerk

Sharon Seffens

Court Reporter.

Douglas McCormick / Charles LaBella
Andrew Gentin, DOF

Assistant U.S. Attorney

U.S.A. v. Defendant(s):

Present Cust. Bond

Attorneys for Defendants:

Present App. Ret.

1. Stuart Carson

X

X

Nicola T. Hanna

X

X

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. The Court sentences the defendant (Refer to separate Judgment Order) in accordance with its sentencing memorandum (attached hereto) with the modifications indicated on the record .

cc: **USPO**
PSA

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Initials of Deputy Clerk kjt

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United States v. S. Carson, Case No. SACR 08-268 JVS

Sentencing Memorandum

This matter is before the Court for sentencing defendant Stuart Carson (“S. Carson”) on his plea to Count 1 of the Superseding Information 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 4 months imprisonment, followed by 8 months of home detention with a fine of \$20,000 represents a reasonable sentence in light of all of these factors.¹

1. Sentencing Guidelines.² The Court adopts the Guidelines analysis of the PSR.

1.1. Offense Level.³ The Court concurs that the applicable guideline is Section 2B4.1(a) which provides a base offense level of 8. A 3-level⁴ enhancement based on the amount of the bribe in issue (\$16,000) is applicable. U.S.S.G. §§ 2B4.1(b)(1), 2F1.1(b)(1)(D). S. 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 9.

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 S. Carson’s plea is part of package deal with his wife Hong Carson (Plea Agreement, ¶ 2), the Court has analyzed each stipulated sentence independently in coming to its conclusion that the sentence imposed is reasonable.

²Although 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.

³Because of *ex post facto* considerations, the Probation Office has used the November 1, 1998 Guidelines. (PSR, ¶ 40.)

⁴The Court notes that in the Plea Agreement, the parties had agreed to a 4-level enhancement, apparently on the basis of the current Guidelines. (Plea Agreement, ¶ 17.)

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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 S. Carson'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. 2-3.) He was prepared to testify against the remaining two defendants, Paul Cosgrove ("Cosgrove") and David Edmonds. The Court does note that the plea came late in the day. However, the Court agrees that S. Carson's cooperation warrants a 2-level departure (offense level 7/Criminal History Category I.)

1.4. Conclusion. The Court finds that proper application of the Guidelines calls for a sentence of imprisonment for 0-6 months and a fine of \$500 to \$5,000.

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."

S. Carson pled to a single bribery transaction involving the Turow Power Plant, owned by the Polish government's Polskie Sieci Elektroenergetyczne.⁵ (PSR, ¶¶ 2, 29.) However, the scope of violations of the Foreign Corrupt Practice Act during his leadership of 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.⁶ (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. S. Carson was a major participant if not the sole architect of the program.

He was raised in a close-knit, middle-class family in Ohio.

⁵For purposes of the plea, he only admitted that there was a high probability that the payment which he authorized was a bribe, and that despite this knowledge, he failed to investigate. (Plea Agreement, ¶ 15.) His admission to the "tip of the iceberg" was sufficient for the Court to accept the plea. The Court notes that he did not elaborate on the offense during his interview with the Probation Officer. (PSR, ¶ 38.)

⁶The corporate indictment covered more than S. Carson's tenure.

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He was married, and divorced, and married co-defendant Hong Carson in 1992. They have three children ages 13, 18, and 20. (PSR, ¶ 78.)

S. Carson holds a bachelor's degree in engineering and a masters in business administration. (PSR, ¶¶ 89-90.)

He was employed by CCI from 1985 to 2005, when he retired. For the last 16 years, he was the president and chief executive officer. During his tenure, CCI grew substantially. (S. Carson Sentencing Memorandum, pp. 7-8.) Since 2005, he has been employed as an advisor to the president of Valvtechnologies, Inc. (PSR, ¶ 93.)

S. Carson has a net worth in excess of \$6 million and a positive monthly cash flow of nearly \$40,000. (PSR, ¶ 98.)

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.⁷

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's imposition of a term on imprisonment is in direct furtherance of 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. S. Carson's medical needs, although extensive in terms the number of medications he takes and the number of treating physician he sees, are not atypical of a person in his 70s. The Bureau of Prisons has the ability to meet these needs. The Court acknowledges his recent hospitalization for bleeding

⁷The 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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related to diverticulosis. However, there is no suggestion that he is danger of imminent death.⁸

2.6. Kinds of Sentences Available. Under the terms of the advisory Guidelines, a sentence falling within Zone A affords the Court wide latitude in selecting the form of sentence, and the sentence may include straight probation. U.S.S.G. § 5C1.1(b). The Court is cognizant that it need not impose a term of imprisonment. The Court, of course, acknowledges that this Guidelines directive, as well as all others in the Guidelines, is merely advisory.

2.7. Sufficiency of Punishment. The Court finds that a sentence of 4 months imprisonment, followed by 8 months home detention, with a fine of \$20,000⁹ is sufficient but no more than necessary to meet the goals of the Sentencing Reform Act, including specifically deterrence. Kimbrough v. United States, 552 U.S. 85. 110-11 (2007). The Court finds that S. Carson has the ability to pay a fine. (PSR, ¶ 98.)

The Court has taken into account S. Carson's cooperation and the fact that he has no prior criminal history. In a typical case, probation with a term of home detention would be the appropriate sentence. This case is not typical.

Although S. Carson pled to a single transaction, which was not listed in the Indictment, it is evident that the scheme was far broader, and that as chief executive officer of CCI, he played a major role in crafting and implementing the FIC bribery strategy. This case has garnered substantial attention in the general press and the business press. Others in S. Carson's position will be looking at the sentence which the Court imposes. Deterrence is the overriding factor in the Court's conclusion that a term on imprisonment is required here. The Court needs to make clear that the Foreign Corrupt Practices Act has a serious purpose, and that it will be enforced.

The Court has taken into consideration S. Carson's age and health, and reduced its original intent to impose 6 months imprisonment. The Court does not believe that S. Carson's medical problems are nearly as extensive as those of co-defendant Cosgrove, whom the Court

⁸S. Carson's reference to the World Bank life expectancy statistics does not deter the Court from imposing a short term of imprisonment. (See S. Carson Sentencing Memorandum, p. 6 & n.3.) In any event, if one uses recent Social Security Administration tables, the life expectancy of a 74 year-old male is in excess of 11 years. (<http://www.ssa.gov/oact/STATS/table4c6.html>.) In no sense is the Court's sentence terminal.

⁹By virtue of the Plea Agreement, S. Carson has been aware of the possibility of a fine in excess of the applicable Guidelines range. (Plea Agreement, ¶ 17; see Fed. R. Civ. P. 32(h).) Moreover, he does not object to the fine. (S. Carson Sentencing Memorandum, p. 3.)

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sentenced to home detention on the basis of those considerations.¹⁰ To the extent that he has immediate surgical needs, the Court would consider deferring his surrender date.¹¹ (See S. Carson Sentencing Memorandum, p. 1.)

A sentence of probation with home detention would be a minor inconvenience to a person in S. Carson's circumstances. (PSR, ¶¶ 81, 98-103.) It would not reflect the seriousness of the crime, and clearly would fall short of achieving the goal of deterrence.

3. Facts of the Case. There are no additional facts which the Guidelines analysis and the other factors in Section 3553(a) have not taken into account in type or degree. However, S. Carson notes several considerations.

The Court does not find that S. Carson's participation in his family's life warrants either a departure or a variance. (S. Carson's Sentencing Memorandum, p. 10.) The effects on his family will not be materially different than the effects on any family, particularly in light of the fact that his wife will not be incarcerated.

The sentence which the Court imposes is not disparate compared to the 13-month term of home detention which the Court imposed on co-defendant Cosgrove. (See 18 U.S.C. § 3553(a)(6). But for Cosgrove's health, the Court would likely have imposed a term of imprisonment of the same length.

5. Objections to PSR. S. Carson objects to certain statements in the PSR.

First, he objects to the statement that he caused a greater loss to CCI than Cosgrove. (See PSR, ¶ 54.) The Court need not resolve this issue. The Court focuses on the fact that his participation in the CCI's illegal activities went beyond the single \$16,000 bribe which he acknowledged.

Second, the Court rejects that statement that S. Carson resigned as a result of the present investigation as factually incorrect. (See PSR, ¶ 94.) This has been corrected in the revised PSR.

5. Conclusion. In setting this sentence, the Court has taken into account that it has

¹⁰As the Government correctly surmises, but for Cosgrove's extensive medical problems, the Court would have imposed a term of imprisonment. (Government's Sentencing Position, pp. 7-8.)

¹¹His latest medical report indicates a "possible need for surgery if [he] has repeat episodes" of bleeding. (S. Carson Sentencing Memorandum, Ex. DD, p. 2.)

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discretion under both the Guidelines and Booker. As noted above, the Court has exercised its discretion under the Guidelines, 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 6 months imprisonment, followed by 8 months home detention, with a fine of \$20,000 represents a reasonable sentence.