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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF ARKANSAS
FORT SMITH DIVISION

UNITED STATES OF AMERICA,)
)
Plaintiff,)
)
VS.) CASE NO. 5:22-CR-50053
)
ROBERT CESSARIO,)
)
Defendant.)

REPORTER'S RECORD
TRANSCRIPT OF SENTENCING HEARING
BEFORE THE HONORABLE P.K. HOLMES, III
January 5, 2023; 10:39 a.m.
FORT SMITH, ARKANSAS

FOR THE GOVERNMENT:
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Proceedings recorded in realtime via machine shorthand.

Dana Hayden, CCR, RMR, CRR, CRC
Federal Official Court Reporter
Fort Smith, Arkansas 72901

***** PROCEEDINGS *****

1
2 THE COURT: We're here this morning for a
3 sentencing in the matter of *United States versus Robert*
4 *Cessario*. The case number is 5:22-CR-50053.

5 The Defendant is present with his attorney,
6 Mr. John Everett, and the government is represented by
7 Assistant United States Attorney Alan Jackson.

8 Are the parties ready to proceed?

9 MR. JACKSON: Government is, your Honor.

10 MR. EVERETT: We are, your Honor.

11 THE COURT: Okay. I'll first state the
12 procedural history of this case. On August the 17th of
13 2022, Mr. Cessario appeared with his attorney,
14 Mr. Everett, before this Court.

15 At the time, he waived to the right to be
16 charged by an indictment and consented to the filing of
17 an information which charged him with one count of
18 corrupt destruction of an object in an official
19 proceeding. Mr. Cessario pled guilty to that
20 information pursuant to the terms of a written plea
21 agreement between the parties.

22 Now, Mr. Cessario, I need to ask you a couple
23 of questions. First, have you been fully satisfied with
24 the counsel, the representation, and the advice that you
25 have received from your attorney, Mr. Everett?

1 THE DEFENDANT: Yes, your Honor.

2 THE COURT: Okay. Now, a presentence
3 investigation report, the initial report, was prepared
4 in this matter and filed on October 14th of 2022, and a
5 final report was filed on November 14th of 2022.

6 Mr. Cessario, did you have an opportunity to
7 review, to read this presentence investigation report
8 and discuss it with your lawyer, Mr. Everett?

9 THE DEFENDANT: I did, your Honor.

10 THE COURT: Okay. And, Mr. Everett and
11 Mr. Jackson, have you both reviewed the presentence
12 investigation report, including any revisions that could
13 have been made after the initial disclosure?

14 MR. JACKSON: Yes, sir.

15 MR. EVERETT: I have, your Honor.

16 THE COURT: Okay. Neither party had objections
17 to the original presentence investigation report;
18 therefore, the Court will adopt the final presentence
19 investigation report as filed.

20 Now, Mr. Cessario, at your waiver of an
21 indictment and plea to the information hearing, while I
22 accepted your plea of guilty to Count One, I deferred
23 acceptance to the plea agreement that you entered into
24 with the government until I had an opportunity to review
25 the presentence investigation report.

1 The plea agreement entered in between you and
2 the government was made under Rule 11(c)(1)(C) of the
3 Federal Rules of Criminal Procedure. Under that rule,
4 the government agreed to a specific sentence which is
5 binding on the Court unless the Court rejects the plea
6 agreement and you choose not to withdraw your plea.

7 Now, I've had an opportunity to review the
8 presentence investigation report; of course, the plea
9 agreement and the factual basis for the plea; and I've
10 also given the parties to make any objections they are
11 going to make or wish to make to the presentence
12 investigation report.

13 I'm now going to accept the plea agreement that
14 you entered into with the government by which the
15 government agreed to a sentence of probation because I
16 find that that plea agreement reflects the seriousness
17 of your offense behavior, and the Court finds that the
18 plea agreement entered into and negotiated between the
19 parties is fair and reasonable. Therefore, the judgment
20 and sentence imposed by the Court will be consistent
21 with the terms of your plea agreement.

22 Now I'm going to set forth what the sentencing
23 options are in the case. These are the statutory
24 penalties applicable to Count One of the information: A
25 maximum term of imprisonment of 20 years, a term of

1 supervised release of not more than three years, a
2 maximum fine of \$250,000, and a mandatory special
3 assessment of \$100. Again, those are the statutory
4 maximum penalties.

5 Now, the United States sentencing guidelines
6 are advisory. Now, I've consulted those guidelines to
7 determine the sentence to impose but recognize I have
8 the authority to depart or vary from the recommendation
9 under the guidelines.

10 At this time I'm going to go through the
11 guideline calculation which is set out in the
12 presentence investigation report. Now, according to
13 2J1.2(a) of the sentencing guidelines, the base offense
14 level is a Level 14.

15 Mr. Cessario is entitled to a two-level
16 reduction for acceptance of responsibility; so, after
17 that adjustment is made, the total offense level is a
18 Level 12.

19 Now, based on criminal history, which, there
20 was no criminal history, zero criminal history points,
21 that places Mr. Cessario in a Criminal History
22 Category I. Therefore, the guidelines recommend the
23 following sentence: A term of imprisonment of 10 to 16
24 months, a term of supervised release of one to three
25 years, a fine in the range of 5,500 to \$55,000, a

1 mandatory special assessment of \$100.

2 Now, that's the recommendation under the
3 guidelines. Now, under United States Guideline 6B1.2(c)
4 in the case of a plea agreement that includes a specific
5 sentence here under Rule 11(c)(1)(C), the Court may
6 accept the agreement if the Court is satisfied either
7 that, number one, the agreed sentence is within the
8 applicable guideline range, or, two, the agreed sentence
9 is outside of the applicable guideline range for
10 justifiable reasons and those reasons are set forth with
11 specificity and the statement of reasons for it. So
12 that's the guidelines that apply to your case.

13 Now, again, in determining the sentence to
14 impose, it's going to be based on factors found in
15 Title 18 United States Code Section 3553(a) and those
16 are, number one, the nature and circumstances of the
17 offense; number two, your history and characteristics;
18 number three, the sentencing range under the guidelines
19 of 10 to 16 months; and, again, the need to avoid
20 unwarranted sentence disparities among defendants who
21 have similar records who have been found guilty of
22 similar conduct.

23 Now, again, the parties have entered into a
24 plea agreement that requires a downward variance from
25 the recommendation under the sentencing guidelines in

1 the 3553(a) factors. Since the Court has accepted the
2 plea agreement with a specific sentence, the Court
3 intends to impose a downward variance under the
4 sentencing guidelines.

5 Now, both parties have filed a sentencing
6 memorandum setting forth their arguments as to the
7 sentence that the Court would impose and the options
8 that the Court had under the 3553(a) factors.

9 So, Mr. Jackson, I note that in your sentencing
10 memorandum, there are a couple of issues to address, and
11 I'd like to ask you if you'd like to make any comments
12 or specific statement on behalf of the government and
13 address any of those issues you might wish to address.

14 MR. JACKSON: Thank you, sir.

15 Your Honor, the government obviously believes
16 that a sentence of probation is correct, but in light of
17 the Defendant's sentencing memo, the government would
18 urge the Court to ensure that the sentence that the
19 Court imposes is one that will remind Mr. Cessario of
20 the seriousness of his conduct and the potential effect
21 that his conduct had on a significant prosecution.

22 And the government would suggest that to be
23 effective, that reminder should include a period of
24 probation in excess of one year and probation that is
25 supervised which requires Mr. Cessario to respond

1 regularly to probation as a reminder of his conduct,
2 that it should include some period of home confinement
3 at the Court's discretion, again to remind Mr. Cessario
4 regularly that what he did is completely unacceptable.

5 It ought to include a monetary penalty which
6 should also reflect that Mr. Cessario is capable of
7 paying. And -- and this is not in my sentencing memo,
8 but I think the Court is entitled to include it, and
9 that might be some period of community service.

10 Mr. Cessario, according to the PSR, is retired
11 and would have the opportunity, and it would be a way of
12 him mixing in with the community that was potentially
13 harmed by his conduct.

14 THE COURT: Okay. Thank you, Mr. Jackson.

15 Mr. Everett, I'd like to give you an
16 opportunity to speak.

17 MR. EVERETT: May it please the Court.

18 Your Honor, given your ruling that the plea
19 agreement is accepted by you, it strikes me that the
20 only issues before you are the conditions of probation
21 and the term of probation.

22 To be perfectly candid with you, I don't think
23 that the suggestion that the probation be supervised and
24 Mr. Cessario have to report to a probation officer is
25 outside the bounds of reason. That makes sense to me.

1 I don't think that anybody with a straight face can say
2 that Mr. Cessario has criminal tendencies or he's about
3 to breach and violate the criminal law during whatever
4 the period of probation is, but that doesn't seem to be
5 unnecessarily burdensome on him.

6 The matter of home detention, however, fits
7 into a different category. Since the sentencing
8 memorandum were filed by the parties and since the
9 presentence report, Mr. Cessario has been awarded the
10 sole custody of his two teenage sons by an order of the
11 Benton County Circuit Court.

12 As the presentence report shows, there is no
13 family around this area to assist Mr. Cessario in that,
14 so he has that burden himself, and to require him to be
15 at home significantly interferes with not only
16 Mr. Cessario but with those two boys.

17 It also seems to me, your Honor, that it's
18 worthy of consideration that Mr. Cessario's role has
19 been impacted more dramatically by the conviction than
20 is in the typical criminal case. He has, as a
21 consequence of conviction, lost his employment with the
22 FBI.

23 He's virtually not qualified, not hireable in
24 any law enforcement or security business as he has been
25 for all of his adult life, and in order for him to get a

1 job is going to be kind of a trick too. It is true he's
2 retired, but it's not true that he's not anxious to get
3 back in the employment business as soon as he reasonably
4 can.

5 Given those factors, your Honor, and also given
6 the two cases that I have submitted to you on the
7 Defendant's presentence report in which people, FBI
8 people, committed similar violations got one year
9 probation -- I don't frankly know if it was supervised
10 or not -- strikes me that that sentence would be in
11 compliance with the factors you just enumerated and
12 would be appropriate in this case.

13 Thank you for listening to me, Judge.

14 THE COURT: Thank you, Mr. Everett.

15 And, Mr. Cessario, you can remain seated there,
16 but I'd like to give you an opportunity to allocute and
17 say anything you might wish to say.

18 THE DEFENDANT: Yes, your Honor. Thank you.

19 I'd like to say that five years ago, when all
20 this happened, I had an extreme lack of judgment. I
21 shouldn't have done what I did.

22 I apologize to my friends, my family, my
23 colleagues. It was just not smart of me to not let the
24 process play out rather than try to protect my medical
25 records on my own. It was a mistake, and I've learned

1 from that mistake, and I just want to say to the Court
2 again I'm sorry.

3 THE COURT: Thank you, Mr. Cessario.

4 Again, what I'm going to do is discuss the
5 3553(a) factors because that's what the Court bases its
6 sentence on, and it's very important that the Court
7 discuss all those factors because they are also all
8 important.

9 In addition to those factors, I mentioned also
10 there are other factors. I don't mention them in all
11 the sentencing hearings, but some of the goals of
12 sentencing in addition to taking those into account is
13 to impose a sentence that shows the seriousness of the
14 offense and the need for just punishment for the offense
15 and so what I'd like to do is just very briefly state
16 here the nature and circumstances of the offense.

17 Again, the presentence investigation report
18 does a good job of setting out what the offense conduct
19 is; plus, also there is a complete record that Judge
20 Brooks made in the underlying criminal case which is
21 complete with lengthy orders that address many of the
22 legal issues in that case and also the legal issues that
23 arose in that particular case as a result of your
24 conduct.

25 Again, the offense to which you have been found

1 guilty is corruptly tampering with an object -- in this
2 case it was the recordings on the laptop computer -- to
3 be used in an official proceeding, which was the trial
4 that Judge Brooks was conducting in the United States
5 district court.

6 Again, this is an offense against the
7 United States. It's also an offense against, in
8 particular, the United States District Court in an
9 official proceeding in which it was conducted. So that
10 is what the nature of the offense is.

11 Again, you were the FBI case agent in the case
12 which involved the public corruption case of elected
13 officials in the State of Arkansas, which was
14 nevertheless to say a high-profile case, but you
15 knowingly and intentionally deleted and wiped clean the
16 contents of a laptop computer which contained those
17 recordings and which were to be used in that criminal
18 case and which the defendants, through their counsel,
19 contended contained potential exculpatory evidence.

20 Again, you took these actions in direct
21 contravention to the direction of the assistant
22 United States attorneys who were prosecuting that case,
23 and you were asked to deliver that laptop to the FBI
24 forensic lab for the purpose of examination of that
25 computer.

1 And, again, the actions, of course, you told
2 the FBI that you had wiped clean the laptop, which I
3 believe was a MacBook; and, again, the forensic
4 examination did show that it was wiped clean.

5 But, again, these actions required the Court
6 conduct a three-day hearing in that case in which the
7 Court received evidence and testimony of the parties,
8 including, I believe, your testimony as well.

9 And the Court issued orders based on that
10 hearing, but the Court did conclude that there was no
11 prejudice to the defendants in that particular case
12 because there was the many -- the reason there was no
13 prejudice in the case is that the recordings were still
14 available, although you did -- the recordings that you
15 had on your computer, you did delete those and wipe them
16 clean for whatever reason that you did so.

17 But what the Court did in that particular
18 proceeding was impose sanctions on the government, which
19 made the case extremely -- much more difficult for the
20 government. It precluded you from being a witness in
21 the case even though you were the case agent for the
22 entire case; prohibited the government from using those
23 recordings, as well, in their case-in-chief. However,
24 it did not prohibit the defendants from using those
25 defendants, and it's my understanding that the

1 defendants chose not to use those recordings at that
2 trial, which nevertheless shows that Judge Brooks was
3 correct in concluding there was no exculpatory evidence
4 that was erased.

5 So those are the nature and circumstances of
6 the offense, but it's a serious offense. It's a serious
7 offense because of the actions that the district court
8 had to take in remedying a very difficult criminal case.

9 Now, regarding your history and
10 characteristics, again, you served as an FBI special
11 agent for over 17 years. Except for those -- except for
12 this violation, it appears that you performed well with
13 your duties as an FBI agent in Miami and Washington and
14 Northwest Arkansas.

15 Again, you have two minor children, as
16 Mr. Everett just referred to, that you have custody of
17 that reside with you that attend high school, I assume
18 in Bentonville.

19 You have had some serious health issues and
20 probably continue to have some serious health issues,
21 and I believe you attribute some of those health issues
22 to causing you to exercise some poor judgment in the
23 handling of that -- of that laptop computer.

24 Again, the Court must impose a sentence that
25 shows the seriousness of the offense and just punishment

1 for the offense. It's a very serious offense because it
2 was committed against the United States and it was
3 committed against the United States in an official
4 proceeding in the United States District Court.

5 And the Court was handling -- as we all know,
6 Judge Brooks devoted a lot of resources to that
7 particular case and spent a lot of time on that
8 particular case to ensure that the parties in that case,
9 the defendants in that case, received a fair trial, and
10 those actions that you took unfortunately undermined the
11 government's preparation and also the government's
12 handling of that case at that trial.

13 Fortunately, the District Court was able to
14 conduct the proceedings in a way that restored
15 confidence of the public in that particular case because
16 Judge Brooks, who is a very thorough judge, conducted
17 that case very well, spent three -- not only three days
18 in that hearing, spent a long day in that trial and
19 issued multiple orders, many of which were impacted by
20 this action that you took; but all those orders were
21 affirmed at the Eighth Circuit Court of Appeals and
22 appeals that were taken by all of the defendants in that
23 case.

24 So, again, he was correct in making a finding
25 that there was no prejudice to the defendants in that

1 case, but nevertheless, that does not override the
2 seriousness of the offense and, therefore, the Court
3 must impose a sentence that shows just punishment for
4 the offense conduct.

5 So here's what the -- here's what I intend to
6 do regarding the imposition of sentence in the case.
7 The Court intends to -- again, the plea agreement is a
8 binding plea agreement but, again, having reviewed the
9 plea agreement, I think it's fair and reasonable the
10 agreement that the parties entered into.

11 So it's going to be the intent of the Court to
12 place you on a term of probation for three years. I
13 think the extent of this variance is sufficient but not
14 greater than necessary to comply with the goals of
15 sentencing.

16 There will be special conditions that go with
17 this term, three-year term of probation: Number one,
18 Defendant shall submit to a search of -- this is a
19 standard special condition in all cases. The defendant
20 shall submit to search of his personal, real and/or
21 personal property, residence, place of business or
22 employment and/or vehicles conducted by the United
23 States Probation Office based upon reasonable suspicion
24 of criminal activity or any violation of condition of
25 supervised release.

1 The Defendant shall spend the first six months
2 of his term of probation under the terms and conditions
3 of home detention without location monitoring. During
4 home detention, Defendant shall not leave the residence
5 for any reason without authorization from the U.S.
6 probation officer.

7 When authorized, the Defendant is allowed to
8 leave his residence for employment, medical
9 appointments, religious purposes, or any other times as
10 may be specifically authorized by the United States
11 probation officer.

12 So those are going to be the conditions. And I
13 impose that last condition because, again, to show
14 seriousness of the offense and just punishment for the
15 offense.

16 Again, the United States Probation Office -- I
17 recognize you have two sons, but the United States
18 Probation Office is experienced in working with
19 individuals who are placed on a term of probation that
20 includes a condition of home detention.

21 The Court will impose a fine. The Court
22 believes the defendant has the ability to pay a fine
23 and, again, the Court intends to impose a fine of
24 \$25,000. I think that again is sufficient but not
25 greater than necessary to comply with the goals of

1 sentencing. That falls in the middle of the range of
2 the fine recommended under the United States sentencing
3 guidelines, and it is probably the most significant fine
4 that I've imposed in a case against an individual but,
5 nevertheless, I believe because of the seriousness of
6 the offense and what it caused the Court to have to do
7 in its official proceeding, I believe that the fine is
8 appropriate.

9 The Court will impose a special assessment of
10 \$100, which is mandatory and due immediately.

11 Now, I have to state that the total criminal
12 monetary penalties are due as follows: A lump sum
13 payment of \$25,100 is due immediately.

14 If Defendant is unable to pay the full amount
15 immediately, then any remaining balance shall become a
16 condition of probation with the remaining balance to be
17 paid in monthly installments of 15 percent of
18 Defendant's net monthly household income, with the
19 entire balance to be paid in full one month prior to the
20 end of the term of probation.

21 So that is -- and I'll mention two other facts
22 regarding the sentence the Court imposes. While on
23 probation, Defendant shall not commit any other federal,
24 state, or local crime and shall not possess a firearm,
25 ammunition, destructive device or any other dangerous

1 weapon, and he shall comply with the DNA collection
2 provisions under Title 18 United States Code Section
3 3583(d). Again, this is really a standard condition
4 that's imposed in cases.

5 Also, the Court finds the Defendant poses low
6 risk of substance abuse and, therefore, orders any drug
7 testing condition, standard condition of probation, be
8 waived.

9 So that's the sentence the Court intends to
10 impose.

11 Mr. Jackson, do you know of any legal reason
12 why sentence should not be imposed as stated?

13 MR. JACKSON: No, your Honor, I do not.

14 THE COURT: Okay. Mr. Everett, do you?

15 MR. EVERETT: I do not, your Honor.

16 THE COURT: Okay. Then sentence is imposed as
17 stated.

18 Now, Mr. Cessario, you have the right to appeal
19 your conviction if you believe that your guilty plea is
20 somehow involuntary or there's some other fundamental
21 defect not waived by your guilty plea.

22 Now, under some circumstances, the Defendant
23 also has the right to appeal the sentence; however, a
24 defendant may waive that right as part of the plea
25 agreement, and you have entered into a plea agreement

1 which waives some or all of your rights to appeal the
2 sentence itself. Such waivers are generally
3 enforceable, but if you believe that the waiver itself
4 is not valid, you may present that theory to an
5 appellate court.

6 Again, any notice of appeal on any issue must
7 be filed within 14 days of the entry of the judgment.
8 Again, if requested, the clerk will prepare and file the
9 notice of appeal on your behalf.

10 If you cannot afford to pay the cost of an
11 appeal, you have the right to apply to appeal *in forma*
12 *pauperis*, which means you can ask the clerk to waive the
13 filing fee, and on appeal you can apply for
14 court-appointed counsel as well.

15 So, Mr. Jackson, anything else on behalf of the
16 government?

17 MR. JACKSON: The government has nothing else,
18 your Honor.

19 THE COURT: Okay. Thank you, Mr. Jackson.

20 And, Mr. Everett, anything else on behalf of
21 the Defendant?

22 MR. EVERETT: No, your Honor. Thank you.

23 THE COURT: Thank you.

24 And court will be in recess.

25 (Proceedings adjourned at 11:04 a.m.)

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CERTIFICATE OF OFFICIAL REPORTER

I, Dana Hayden, Federal Official Realtime Court Reporter, in and for the United States District Court for the Western District of Arkansas, do hereby certify that pursuant to Section 753, Title 28, United States Code that the foregoing is a true and correct transcript of the stenographically reported proceedings held in the above-entitled matter and that the transcript page format is in conformance with the regulations of the Judicial Conference of the United States.

Dated this 24th of January, 2023.



Dana Hayden, CCR, RMR, CRR, CRC
Federal Official Court Reporter