

V

WESTERN DISTRICT OF LOUISIANA
FILED
MAY 14 1990
ROBERT H. SHERWELL, CLERK
BY REPORT

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA
LAKE CHARLES DIVISION

UNITED STATES OF AMERICA *
 *
VERSUS * CRIMINAL NO. 90-20003-01
 *
GEORGE S. ACKERSON *
 *
 * * * * *

OBJECTIONS TO PRESENTENCING REPORT

NOW INTO COURT, comes GEORGE S. ACKERSON, defendant herein, who presents to the Court the following objections and proposed supplements to the presentence report:

(References are made to paragraphs of the Presentence Report served on defendant's counsel May, 1990).

PART A. THE OFFENSE

Paragraph 8.

Paragraph 8. has some discrepancies and should be written as follows:

"8. On December 14, 1989, Ackerson and Caton made one copy of the front side of a fifty (\$50.00) dollar bill on the laser copier and discussed copying one hundred (\$100.00) dollar bills and Ackerson's plans for distribution of the copied money."

Paragraph 11.

Paragraph 11. should be supplemented as follows:

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"11. In the early morning hours of December 16, 1989, Caton and Ackerson were observed making copies of one hundred (\$100) dollar bills. Caton and Ackerson decided the bills did not look authentic enough so they agreed to return later to make the necessary adjustments to get right colors. The initial bills which were printed on one side and were not realistic looking were completely destroyed to the best of George Ackerson's knowledge. However, the Government's informant, Carl Hubert, confiscated some of the trial copies and supplied them to the Government."

Paragraph 16. Base Offense Level:

This paragraph is agreed to as it is written but believes there should be some additional statements reducing the base level pursuant to 2X1.1 (b) (2) as follows:

2X1.1.(b) (2): If a conspiracy decreased by three levels, unless the defendant or a co-conspirator completed all of the acts conspirators believe necessary on their part for the successful completion of the offense or the circumstances demonstrate that the conspirators were about to complete all such acts but for the apprehension or an interruption of some similar event beyond their control.

It is argued that the base level of nine (9) should be reduced by three (3) because of the existence of the conspiracy. In this instance the

parties had not completed all of the acts necessary to complete the offense. The initial bills were printed on one side, obviously not legal currency, and had not been cut or shaped to be distributed. In fact, the initial printings were destroyed because of their inaccuracies. Circumstances do not demonstrate that the conspirators were about to complete all necessary acts. In fact, investigation has indicated that the machine being used made it impossible for items to be printed on both sides of the same sheet of paper. George Ackerson has discussed the matter with copy machine representatives and has found that an attempt to print on the reverse side of the alleged counterfeit documents would create a jam and/or machine malfunction making it impossible to complete the acts. Additionally, if in fact the color could never have been obtained to closely resemble that of legal currency, the plan would never have gone forward. George Ackerson was merely in the process of determining the feasibility of the possibility of doing the offense. Inasmuch as the offense was never satisfactorily completed his base level should be reduced by three (3).

Paragraph 17.: Specific Offense Characteristics:

Reference is made that Section 2B5.1(b)(1) is applicable to this situation. As previously argued the production of counterfeit bearer obligations was never consummated. In fact, the initial trial copies were intended to be destroyed. The Government's informant withheld some of the initial copies which were turned over to the Government for use as evidence in this matter. No single entire bill was ever manufactured by the defendants. There were photocopied fronts of bills on some sheets, and photocopied backs of bills on others. The sheets were never cut, nor were any copies made on both sides to simulate an entire bill.

The key wording in Section 2B5.1(b)(1) is "face value". If we disregard the argument that the bills have no face value but do in fact have a value of what is shown on the copy, the offensive characteristic to increase the basic offense level is still incorrect. Evidence submitted to defense counsel by the Government indicate five (5) sheets of copies bills each having an imprint of one side of four United States one hundred (\$100) dollar bills. Four of the sheets have the face side of the bill and one sheet has the reversed side. If placing a face value on the items that were actually in existence at the

time of arrest, the amount would be merely two thousand (\$2,000.00) dollars. Probation and parole has not used the face value of items submitted in determining their offense characteristics. The face value of an amount intended to be produced is nothing. There is no objective finding to substantiate the use of an amount of one hundred thousand (\$100,000.00) under 2B5.1(b) (1) and further by using the chart in 2F1.1(b) (1) (G). If any application should be made under 2B5.1(b) (1) it should make reference to 2F1.1(b) (1) (A). Using this guideline there would be no increase which would maintain the base level offense which the Office of Probation and Parole has set at nine (9) but defense argues should be a six (6).

Paragraph 19. Adjusted Offense Level (Subtotal):

Should be reduced under defendant's argument to a total of six (6). This being the subtotal as indicated in arguments for paragraph 16 and 17 herein.

Paragraph 21. Total Offense Level:

Based on defendant's previous argument should be four (4) using the reduction of paragraph 20 indicated by the Office of Probation and Parole.

PART B. THE DEFENDANT'S CRIMINAL HISTORY

Paragraph 22.

This paragraph make reference to United States Army Court Martial. The defendant would add that he has never received any type of final judgment or discharge forms from the United States Government as a result of that action taken.

Paragraph 25. Guideline Provisions:

As Previously argued the defendant believes his total offense level should be a level four (4) with a criminal history category of one (1), the guideline imprisonment range is 0-6 months.

Paragraph 26 and 27.

These paragraphs should be rewritten pursuant to the guidelines under the defendant's computations herein.

Paragraph 29. Guideline provisions:

Defendant believes that the guideline provisions should be rewritten pursuant to the arguments contained herein based on defendant's computations.

Additionally, it appears that there is a mistake in paragraph 29 as is written by the Office of Probation and Parole. The corrected sentence should read as follows:

Incorrect version: Since the minimum of the guideline sentence in this offense is eighteen (18) months, the defendant is not eligible for probation.
5C1.1(f).

Corrected reading: Since the minimum of the guideline sentence in this offense is twelve (12) months, this defendant is not eligible for probation. ..
5C1.1(f).

PART D. OFFENDER CHARACTERISTICS

Paragraph 34.

Defendant does acknowledge that he did return from Guatemala and San Salvador but approximately two years ago. The statement that he loves to take risks is incorrect. He did enjoy being in the military but feels that the sentence indicating his difficulty with impulsiveness and an urge for excitement and adventure should be stricken.

Paragraph 39.

Defendant argues that paragraph 39. should be amended to read as follows:

"Ackerson claims to have served two tours of duty in the U.S. Army. His first tour was from June, 1970 to April, 1972, and his second tour was from January, 1978 to April, 1984. He was court martialed one time in September, 1983, for one count of the unlawful transfer of a duty, free good. He was fined \$10,000.00 and dismissed from the service (Seoul, Korea). There have been no other court martials as indicated in Office of Probation and Parole's reference in paragraph 39.

PART E. FINES AND RESTITUTION

Paragraph 43.

Defendants allege that the fine range should be reduced according to the arguments contained herein concerning the offense level of the defendant Ackerson.

PART F. FACTORS THAT MAY WARRANT DEPARTURE

Paragraph 46.

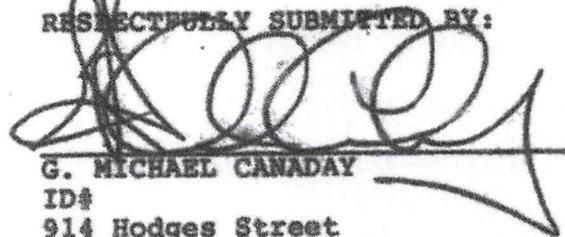
Defendant attaches hereto and makes a part hereof written statement and exhibits concerning what he believes are mitigating circumstances that should be taken into consideration prior to any sentencing in this matter.

Additionally, part of the plea agreement entered into between the Government and Mr. Ackerson concerned Mr. Ackerson's cooperation therewith. Mr. Ackerson has in the past and stands ready to cooperate with the Government in any way. This fact should be taken into consideration.

Mr. Ackerson and his wife recently were divorced and he was awarded the custody of his minor child as of May 8, 1990. Mr. Ackerson has taken over the community debts existing between he and his wife. At this time the impact of a prison term would bring undue hardship to his family situation. While it is clearly the defendant's position that George Ackerson is a

candidate for probationary rehabilitation, he has requested that if the court disallow defendant's arguments as contained herein, that any term of imprisonment be administrated in such a way as to allow George Ackerson to continue in his employment and family obligations through home or community detention, or other court approved possibilities.

RESPECTFULLY SUBMITTED BY:



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