



U.S. Department of Justice

Criminal Division

Washington, D.C. 20530

January 29, 2007

The Honorable Garrett E. Brown, Jr.
United States District Judge
Clarkson S. Fisher Federal Building & U.S. Courthouse
402 East State Street
Trenton, NJ 08608

Re: United States v. Yaw Osei Amoako
Crim. No. 06-702 (GEB)
Sentencing Memorandum

Dear Judge Brown:

Please accept this letter brief in lieu of a more formal submission summarizing the United States' position as to the appropriate sentence to be imposed on Yaw Osei Amoako in this case. Defendant Amoako's advisory sentencing guidelines range for an offense level 21 and criminal history category I is 37 to 46 months. The United States agrees with the calculations provided in the Presentence report, which are consistent with the calculations provided in the plea agreement, but moves the Court to downward depart under U.S.S.G. § 5K1.1 on the basis of the defendant's cooperation. A letter detailing the defendant's cooperation will be submitted under separate cover.

I. Procedural History

On June 28, 2005, Defendant Amoako was charged by complaint in the District of New Jersey with violating the Foreign Corrupt Practices Act (FCPA), Title 15 United States Code, Section 78dd-1(a)&(g) and Title 18, United State Code, Section 2. On June 29, 2005, Amoako appeared for his initial appearance before Magistrate Judge John Hughes and was released on bond. Following a series of continuances for plea negotiations, Amoako entered a plea of guilty on September 6, 2006, to a one-count information charging Amoako with conspiracy to violate the FCPA and the Travel Act, in violation of Title 18, United States Code, Section 371. Sentencing in this case is set for February 5, 2007 at 1:00 p.m. in Trenton, New Jersey.

II. Guideline Calculation

The Government agrees with the advisory sentencing

guidelines calculation set forth on pages 19-20 of the Presentence Report ("PSR"), which is consistent with the parties' stipulated calculation provided in the Plea Agreement. This calculation identifies a base offense level of 10, because the substantive offense involved bribery in violation of 15 U.S.C. §§ 78dd-1(a)&(g), pursuant to United States Sentencing Guidelines ("U.S.S.G.") sections 2X1.1(a); 2C1.1. The base offense level is increased by two points because the offense involved paying more than one bribe, pursuant to U.S.S.G. § 2C1.1(b)(1). The base offense level is increased by 12 levels because the amount of the bribes was more than \$200,000, pursuant to U.S.S.G. §§ 2C1.1(b)(2)(A)(ii), 2B1.1(b)(1)(G). As a result, the adjusted offense level is 24. From level 24, the PSR then subtracts three levels for acceptance of responsibility, pursuant to U.S.S.G. §§ 3E1.1(a)&(b), resulting in a total offense level of 21.

The defendant does not have a criminal history, placing him in a Criminal History Category I.

III. Disputed Issues and Motions

The defendant disputes the use of the word "diversion" in paragraph 27, page 10 regarding the money that the defendant received from the foreign officials. The defendant admitted in an interview with the Government that he told ITXC employees to wire transfer approximately \$100,000 of payments that were meant for an agent in Senegal to S.O., who was a friend of the defendant. The defendant falsely informed the ITXC employees that the agent requested the funds be sent to this individual. The defendant maintained these funds for his own personal use. In addition, subsequent to the Nitel Official receiving payments from ITXC, the Nitel Official gave Amoako \$50,000 of the funds that ITXC paid the Nitel Official. However, this objection does not effect the sentencing calculation.

As part of pleading guilty, the defendant agreed to cooperate in the Government's on-going investigation. A letter detaining the defendant's cooperation is submitted under separate cover and under seal. The Government moves the Court under U.S.S.G. § 5K1.1 to downward depart from the advisory guideline sentence.

IV. Statutory Considerations

In imposing a sentence, the Court must consider not only the advisory Guidelines range, but also all of the other factors listed in 18 U.S.C. § 3553(a). The Court then has the authority to impose any sentence that is reasonable under all of the

factors in 18 U.S.C. § 3553(a), up to the maximum statutory penalties provided for the offense on which the defendant was convicted, in this case, five years. In making that determination, this Court should give considerable weight to the Guidelines range recommended by the Probation Department in the Presentence Investigation Report.

Among other things, a sentence within the applicable Guidelines range will comport with the statutory concerns set forth in Section 3553(a) because "the factors the sentencing commission was required to use in developing the Guidelines are a virtual mirror image of the factors sentencing courts are required to consider under Booker and § 3553(a)." United States v. Shelton, 400 F.3d 1325, 1332 n.9 (11th Cir. 2005). In formulating the Guidelines, the Commission was required to and has considered all of the Section 3553(a) factors. 28 U.S.C. §§ 991(b)(1), 994(b)(1), (c), (f), (g), (m); U.S.S.G. § 1A1.1 Editorial Note. Since then, the Commission has continued to study district and circuit court sentencing decisions and "modify its Guidelines in light of what it learns, thereby encouraging what it finds to be better sentencing practices" and "promot[ing] uniformity in the sentencing process." Booker, 125 S. Ct. at 766.

Additionally, for many of the Section 3553(a) factors, the Sentencing Commission has historical, comprehensive, and nationwide sources of information not available to any single judge. Certainly, this Court is best situated to evaluate those Section 3553(a) factors that are case-specific, such as "the nature and circumstances of the offense and the history and characteristics of the defendant." 18 U.S.C. § 3553(a)(1); see also *id.* at (a)(2)(D). But the Sentencing Commission -- "with its ability to collect sentencing data, monitor crime rates, and conduct statistical analyses," United States v. Wilson, 350 F. Supp. 2d 910, 920 (D. Utah 2005) ["Wilson I"] -- is best situated to evaluate such broader Section 3553(a) factors as "the seriousness of the offense," "promot[ing] respect for the law," "provid[ing] just punishment," "afford[ing] adequate deterrence," "protect[ing] the public," and "avoid[ing] unwarranted sentence disparities," 18 U.S.C. § 3553(a)(2)(A)-(C), (3)-(4), (6). See Wilson I, 350 F. Supp. 2d at 914-925; United States v. Wilson, 355 F. Supp. 2d 1269, 1281-82 (D. Utah 2005) ["Wilson II"], den'g recons. to Wilson I.

In particular, sentencing within the applicable Guidelines range is the best way to avoid unwarranted sentencing disparities between judges, districts, and regions of the county. Thus, there is "no meaningful substitute for the neutrality, coherence,

and equality . . . that [the Guidelines] provide." United States v. Wanning, 354 F. Supp. 2d 1056, 1062 (D. Neb. 2005); see Wilson I, 350 F. Supp. 2d at 925 ("the Guidelines are the only standard available to all judges around the country today," and "[f]or that reason alone . . . should be followed in all but the most exceptional cases"). In addition, because Congress "created the [Sentencing] Commission, approved the Guidelines, and then adjusted them over the years in an ongoing dialog with the Commission," Wilson I, 350 F. Supp. 2d at 918, the Guidelines reflect the public's will, as expressed by their democratically-elected representatives, as to just punishment. See Wilson II, 355 F. Supp. 2d at 1271. In sum, a sentence within the Guidelines range reflects the federal courts' collective sentencing expertise accumulated over the past two decades, as guided by Congress, and is thus "reasonable."

In this case, the sentencing range determined through the application of the Guidelines with a downward departure based on the defendant's cooperation will yield a reasonable sentence.

V. Conclusion

For the reasons stated above, the United States asks that the Court downward depart from the advisory Guidelines range of 37-46 months.

Thank you for your consideration.

Respectfully submitted,

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