

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA	:	
	:	
v.	:	CRIMINAL NO. 14-478
	:	
JOSEPH C. WATERS	:	

GOVERNMENT’S SENTENCING MEMORANDUM

I. INTRODUCTION

Defendant Joseph Waters is scheduled to appear before the Court for sentencing following his guilty plea to charges arising out of two separate fraudulent schemes that he participated in while serving as an elected judge of the Philadelphia Municipal Court. One scheme charged Waters with depriving the public of its right to his honest services through bribery when he fixed a criminal case in the Municipal Court. The second scheme charged Waters with participating in a traditional mail fraud scheme that was designed to deprive a private plaintiff in a small claims case of \$2,738.44. Although the schemes involve different types of cases and parties, they share a common bond: they both are inextricably linked to defendant Waters’ abuse of his judicial position. His corruption has damaged the integrity of very institution he was elected to serve, the First Judicial District of Pennsylvania. Under these circumstances, the government recommends that the Court impose the recommended sentence of 24 months imprisonment as set forth in the plea agreement between the government and the defendant.

II. SUMMARY OF CRIMINAL CONDUCT

The criminal information, the government’s plea memorandum, and the PSI outline the facts of the two schemes to defraud. In both schemes, the defendant, acting on behalf of a

benefactor, intended to influence the outcome of cases through secret, behind-the-scenes conversations with the judges assigned to hear the two cases. In the first scheme, Person #1, a politically active businessman who had regularly supported Waters in his pursuit of judicial office, took advantage of Waters' assistance in fixing a small claims case filed in Municipal Court against Person #1's company. To assist Person #1, Waters called two other Municipal Court judges assigned to hear the case (on different dates) and asked them to rule in ways favorable to Person #1. Waters called Judge #1, and advised Judge #1 of his interest in the case. Referring to Person #1's company, Company A, Waters said: "We have the defendant, [Company A]." Judge #1 then continued the case at Person #1's attorney's request. Several weeks later, Waters contacted Judge #2. He advised Judge #2 that Person #1 was a "friend of mine." Judge #2 then heard the evidence and adjudicated the case in Person #1's favor. After the verdict, Waters helped avert an appeal by the outraged plaintiff in the small claims case by brokering a settlement between Person #1 and the attorney for the plaintiff company. The plaintiff was unaware that Waters had initiated these secret conversations with Judges #1 and #2 on behalf of Person #1.

The second scheme --also infected with secret conversations between Waters and another judge of the Municipal Court-- emerged out of Waters' conversations with CW #1, a witness cooperating with the government. In 2010, CW#1 gave Waters \$1000 in cash to help Waters pay off debts he incurred during his campaign for a position on the Municipal Court. After taking the money, Waters urged CW #1 to contact him if CW #1 or CW #1's friends had any "problems" before the Municipal Court.

CW #1 subsequently advised Waters that CW #1 and CW #1's business associate had a "problem" in Municipal Court. CW #1 and UC #1, an undercover agent playing the role of CW

#1's business associate, notified Waters that UC #1's cousin had been arrested by Philadelphia Police on felony firearms charges. Waters agreed to assist UC #1's cousin. Waters called Judge #1 about a "friend" of his who was scheduled to appear for a preliminary hearing on felony gun charges before Judge #1. Waters said he would appreciate it if Judge #1 could help his friend. After hearing evidence presented at the preliminary hearing, Judge #1 reduced the felony gun possession charge to a misdemeanor.

Both schemes demonstrated how Waters' judicial influence --whether purchased through unreported cash "campaign" contributions and gifts or gained through sustained, political support -- tipped the scales in favor of the party who had access to him, thus corrupting the judicial process. By tapping into Waters' official influence, the party to the litigation triggered ex parte conversations between him and other Municipal Court judges on the cases. The conversations informed the other judges of Water's interest in one of the parties. The outcomes naturally favored those with access to Waters. The proceedings became nothing more than show trials to deceive the uninformed party to the litigation and perpetuate the belief that the case had been decided on the facts and law.

III. Sentencing Guideline Calculation

The Presentence Investigation Report calculates the Guidelines Range as follows:

USSG Section	Levels	Description
§ 2C1.1(a)(1)	14	Base offense level
§ 2C1.1(b)(1)	+2	Offense involved more than one bribe or extortion
§ 2C1.1(b)(3)	+4	Public official in high-level decision-making position
§§ 2C1.1(b)(2),	+2	Value of payment obtained was more

2B1.1(b)(1)(B)		than \$5,000, but less than \$10,000
§ 3E1.1(a), (b)	-3	Acceptance of responsibility
Total	19	

According to the Presentence Investigation Report, with a Criminal History Category of I, the resulting advisory Guidelines Range is 30 to 37 months' imprisonment.

In the plea agreement, the parties stipulated to the same calculations above, except the parties did not stipulate to the 2-level enhancement for more than one bribe. Accordingly, the parties submit that his adjusted offense level is 20, minus 3 points for acceptance of responsibility, the total offense level is 17, yielding a Guidelines Range of 24 to 30 months.

The Presentence Investigation Report's application of § 2C1.1(b)(1) accounts for the two-level difference between the Probation Offices final adjusted range and the stipulations entered into by the government and the defendant. The government is not seeking application of this enhancement because the multiple cash "campaign" contributions and gifts are best viewed as related payments to ensure official action by the defendant when requested by CW #1 and the undercover agents. Treating these cash contributions and gifts as a single bribe, rather than multiple bribes, finds support in the guidance provided for USSG §2C1.1(b)(1). Application Note 2 advises that "related payments that, in essence, constitute a single incident of bribery or extortion (e.g., a number of installment payments for a single action) are to be treated as a single bribe or extortion, even if charged in a separate counts." The Second Circuit's discussion of §2C1.1(b)(1) in United States v. Arshad, 239 F.3d 276 (2d Cir. 2001) is helpful. In evaluating whether multiple payments to a public official constituted multiple bribes, the court evaluated whether each payment was intended to elicit different action. 239 F.3d at 281. The government has concluded that the separate payments here were not intended to elicit different, discrete

actions and, therefore, believes that this application note covers the both the circumstances of this case and the nature of the quid pro quo relationship between CW #1 and the undercover agents.

Accordingly, the government submits that the correct sentencing range under the Sentencing Guidelines is 24 to 30 months. As explained below, the government recommends that the Court impose a sentence of 24 months imprisonment as the custodial portion of the sentence.

IV. Consideration of 3553(a) Factors

This Court must also consider all of the sentencing factors set forth in Section 3553(a). Those factors include: (1) the nature and circumstances of the offense and the history and characteristics of the defendant; (2) the need for the sentence imposed to reflect the seriousness of the offense, to promote respect for the law, and to provide just punishment for the offense; (3) the need to afford adequate deterrence to criminal conduct, and to protect the public from further crimes of the defendant; (4) the need to provide the defendant with educational or vocational training, medical care, or other correctional treatment in the most effective manner; (5) the guidelines and policy statements issued by the Sentencing Commission; (6) the need to avoid unwarranted sentence disparities among defendants with similar records who have been found guilty of similar conduct; and (7) the need to provide restitution to any victims of the offense. 18 U.S.C. § 3553(a).

The nature of the offenses committed by the defendant is especially troubling. Our system of justice depends upon the fair and equal treatment of all litigants who come to court. No player in the system is more responsible for ensuring that fair and equal treatment than the judge who sits as an independent, unbiased voice of reason. In using his position as a judge to

influence cases because one party was a political benefactor and another litigant had provided him with cash “campaign” payments and gifts, defendant Waters breached the duty he owed to public that elected him. Corrupting the judicial process through fixing cases undercuts the core role of judges and diminishes the trust that the community has in its judicial officers and public officials. See, e.g., United States v. Ganim, 2006 WL 1210984, at *5 (D. Conn. May 5, 2006) (“Government corruption breeds cynicism and mistrust of elected officials. It causes the public to disengage from the democratic process because, as the Court stated at sentencing, the public begins to think of politics as ‘only for the insiders.’ Thus corruption has the potential to shred the delicate fabric of democracy by making the average citizen lose respect and trust in elected officials and give up any hope of participating in government through legitimate channels.”).

The defendant comes to this Court without any prior arrests or convictions and an extensive record of prior public service, as a former Marine, police officer, and with wide participation in charitable causes. There is every indication that the defendant has overcome many personal obstacles to advance his career and achieve professional respect. This is all commendable and should be properly considered in setting a sentence. Yet it also highlights how egregious his misconduct was. Everything in his history and characteristics suggests a man who was on full alert that such conduct was illegal. He reached his station in life by overcoming obstacles and executing a career strategy. While many may agree that there is a tragedy here in that he betrayed his many accomplishments and good deeds, it also strongly suggests that this conduct was not the result of a momentary lapse of judgment.

This Court’s sentence must be tailored to deter others from engaging in similar criminal behavior. A term of imprisonment as recommended by the government and agreed upon the parties will deter other judges, public servants and elected public officials from betraying the

public trust. The government asks the Court to send a clear and unequivocal message that this type of wrongdoing will result in severe punishment. See United States v. Spano, 411 F. Supp.2d 923, 940 (N.D. Ill. 2006) (“Unlike some criminal justice issues, the crime of public corruption can be deterred by significant penalties that hold all offenders properly accountable.”). The government believes that a sentence of 24 months imprisonment will accomplish this important goal of general deterrence.

Such a sentence will also adequately punish Waters and promote respect for the law. The government has every reason to believe the prosecution of defendant Waters and this Court’s sentence will be widely discussed in the halls of justice and by those who may be inclined to illegally influence judges.

And, lastly, there is a strong need to avoid unwarranted sentence disparities among similarly situated defendants. As the Court is aware, the Honorable Lawrence F. Stengle recently sentenced three former Philadelphia Traffic Court judges for offenses related to widespread ticket fixing that occurred in the Philadelphia Traffic Court. One traffic court judge received 18 months’ imprisonment, a second received 24 months’ imprisonment, and the third received 20 months imprisonment. The Court may look to these sentences to evaluate an appropriate sentence in this case. The government believes that the sentence agreed upon by the government and the defendant conforms in many respects to the sentences imposed on the defendants in the Philadelphia Traffic Court prosecution.

IV. Conclusion

Defendant Waters committed very serious offenses when he “fixed” two cases pending in the Philadelphia Municipal Court. For all the reasons set forth above, the government urges this Court to impose a sentence of 24 months imprisonment and a fine of \$5,000 on the

defendant. Such a sentence properly accounts for all of the statutory sentencing factors as well as the unique circumstances of this case that are discussed throughout this memorandum.

Respectfully submitted,

ZANE DAVID MEMEGER
United States Attorney

/s/ Richard P. Barrett
RICHARD P. BARRETT
MICHELLE L. MORGAN
Assistant United States Attorneys

CERTIFICATE OF SERVICE

I hereby certify that on this date I caused a true and correct copy of the foregoing Government's Sentencing Memorandum to be served by e-mail and the electronic filing system upon defendant's attorney:

Michael J. Engle, Esquire
123 S. Broad Street
Suite 2500
Philadelphia, PA 19109

/s/ Richard P. Barrett
RICHARD P. BARRETT
Assistant United States Attorney

Date: January 16, 2014