

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION

UNITED STATES OF AMERICA,) DOCKET NO. 3:11-cr-337
)
Plaintiff,)
)
vs.)
)
CORVAIN COOPER,)
)
Defendant.)
_____)

TRANSCRIPT OF SENTENCING HEARING
BEFORE THE HONORABLE ROBERT J. CONRAD, JR
UNITED STATES DISTRICT COURT JUDGE
JUNE 18, 2014

APPEARANCES:

On Behalf of the Government:

STEVEN R. KAUFMAN, ESQ.,
Assistant United States Attorney
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Charlotte, North Carolina 28202

On Behalf of the Defendant:

PATRICK MICHAEL MEGARO, ESQ.,
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LAURA ANDERSEN, RMR
Official Court Reporter
United States District Court
Charlotte, North Carolina

P R O C E E D I N G S

1
2 JUNE 18, 2014, COURT CALLED TO ORDER 2:08 p.m.:

3 THE COURT: Good afternoon, everyone.

4 MR. KAUFMAN: Good afternoon, Your Honor.

5 MR. MEGARO: Good afternoon, Your Honor.

6 THE COURT: We're here in the matter of United
7 States V Corvain Cooper for sentencing. Are the parties ready
8 to proceed?

9 MR. KAUFMAN: Yes, Your Honor.

10 MR. MEGARO: Yes, Your Honor.

11 THE COURT: Mr. Cooper was found guilty by a jury on
12 October 21st, and after that his case was referred to the
13 Federal Probation Department for the purpose of preparing a
14 presentence report.

15 Mr. Cooper, I have a few questions to ask you about
16 that presentence report, if you would please stand.

17 Have you had a chance to read the presentence
18 report?

19 DEFENDANT COOPER: Yes, sir.

20 THE COURT: Do you believe you understand it?

21 DEFENDANT COOPER: Yes, sir.

22 THE COURT: Have you had enough time to go over the
23 presentence report with your attorney?

24 DEFENDANT COOPER: Yes, sir.

25 THE COURT: All right. You may sit down.

1 Is it Mr. Megaro, is that the correct pronunciation?

2 MR. MEGARO: Yes, Your Honor. Thank you.

3 THE COURT: Were there any objections to the
4 presentence report?

5 MR. MEGARO: Yes, Your Honor. I had filed an
6 objection letter on January 23rd, 2014, as well as an update
7 on May 20th, 2014, and the Defendant's Sentencing Memorandum,
8 which I believe was electronically filed on June 12th, which
9 incorporates by reference and expands on some of those
10 objections.

11 THE COURT: I've received all of those. It appears
12 to me that there are two things going on here.

13 One is the statutory mandatory minimum issue, and
14 the other is a series of guideline objections.

15 I guess, taking them in order. With respect to the
16 851, does the defendant deny the validity of any of the
17 predicate convictions that were noticed by the Government in
18 their 851?

19 MR. MEGARO: No, Your Honor. We don't -- we don't
20 object to the validity of the underlying convictions. It's
21 more or less an Eighth Amendment argument with respect to the
22 cruel and unusual punishment with respect to the mandatory
23 minimum.

24 THE COURT: So we've got that going on. And if the
25 Eighth Amendment doesn't bar the imposition of the mandatory

1 life sentence, the Court has no discretion under the statute.

2 MR. MEGARO: I would agree with that statement. If
3 the Court does not find that this violates the Eighth
4 Amendment of the United States Constitution, the statute would
5 strip the Court of any discretion.

6 THE COURT: And what is the argument that there is
7 an Eighth Amendment issue here?

8 MR. MEGARO: I have laid it out in my sentencing
9 memorandum at -- I think it was point 6, Your Honor, which
10 begins on page -- I'm sorry -- page 10 of my memorandum.

11 And without rehashing everything that I've written,
12 I know the Court has read it. The main thrust of the argument
13 is that the punishment does not fit the crime for the factors
14 that were laid out in the Supreme Court case.

15 And I would point out that if Mr. Cooper was
16 prosecuted by the State of North Carolina rather than the
17 United States government, he would be facing a sentence which
18 would be in line with the highest sentence that a co-defendant
19 or co-conspirator received in this case, and what I believe
20 would be -- if the mandatory minimum did not apply, and the
21 Court were to credit all of my objections -- would be a level
22 32, a criminal history category VI, which is 210 to 262
23 months. Which is roughly the same maximum sentence that the
24 State of North Carolina would impose. He would not be able to
25 receive a life sentence.

1 I'm unaware of any state in the United States that
2 would impose a life sentence for trafficking marijuana without
3 any other aggravating factor that would include violence.

4 THE COURT: Very well. What says the Government
5 with respect to the Eighth Amendment claim?

6 MR. KAUFMAN: Your Honor, the convictions are valid.
7 In terms of the Eighth Amendment, Mr. Cooper is an adult male
8 of the age of majority. There's not an issue as to his age.
9 I don't believe there's any issue as to his competence or I.Q.
10 So I don't believe that there's a constitutional challenge.

11 In terms of the 851 notice that we filed, we did so
12 knowing that Mr. Cooper had several factors that weighed in
13 favor of us filing it, to include his very extensive criminal
14 history. He's a VI, based on actual convictions not on status
15 as a career offender. He had a leadership role. He had
16 firearms in the course of the conspiracy. There was
17 obstructive conduct.

18 I mean, there are numerous factors that our office
19 internally would consider, and he hits many of those pistons
20 not just one of them, in terms of using the 851 enhancement.

21 THE COURT: Mr. Megaro, I'm sympathetic to your
22 argument. I would want to have discretion before imposing a
23 life sentence. The absence of discretion is a troubling thing
24 for the Court. But it appears to the Court that from a
25 statutory standpoint, the i's have been dotted, the t's have

1 been crossed. The imposition of a mandatory life sentence is
2 what Congress has provided for someone who has been found
3 guilty of this offense with the priors that Mr. Cooper has.

4 From a constitutional sense, it does appear to me
5 that the Fourth Circuit has spoken in this area and has upheld
6 the constitutionality of a mandatory life sentence for a crime
7 such as this in the *Kratsas* case, and in the unpublished
8 *Sylvester* case cited by the Government. I'm going to overrule
9 the Eighth Amendment challenge in light of that case law.

10 Having done that, you having preserved your
11 constitutional challenge, do you still wish to be heard on the
12 guideline issues?

13 MR. MEGARO: Your Honor, I know that it would seem
14 almost academic in light of the mandatory nature of the
15 sentence, but I don't want to -- I'm ever conscious of
16 possibly waiving any appellate rights.

17 THE COURT: Right. Well, why don't we do this: I
18 have reviewed the objections with respect to the two level
19 increase for a weapon; the drug amount, the -- seems like the
20 leadership enhancement and the double counting.

21 I've reviewed your objections, as well as the
22 government's response, and as to each I think the government
23 has the better argument for the reasons specified, either in
24 the probation office response to your objection or the
25 government's response and supplemental response.

1 And so for the record, you have made each of those
2 objections and I have overruled them.

3 MR. MEGARO: Thank you, Your Honor.

4 THE COURT: All right.

5 MR. KAUFMAN: And Your Honor, I apologize. I
6 believe there was also an enhancement for the obstruction
7 based upon the letter to Mr. Moseley.

8 THE COURT: There was. Do you have Government's
9 Exhibit 45 with you?

10 MR. KAUFMAN: I should, Your Honor.

11 MR. MEGARO: I have -- Your Honor, I have seen
12 Government's Exhibit 45.

13 THE COURT: All right. Let me hear the argument of
14 the Government as to why this exhibit justified a two level
15 obstruction enhancement.

16 MR. KAUFMAN: Your Honor, the context of his letter
17 was after co-defendant Leamon Keishan Moseley, who was one of
18 the testifying witnesses against Mr. Cooper eventually, but it
19 was right after he had been arrested. In actuality, Your
20 Honor had released him on bond. But it was not a fact yet
21 known to Mr. Cooper.

22 He sent this letter to Mr. Cooper's mother with
23 whom -- I'm sorry -- to Mr. Moseley's mother. Mr. Cooper and
24 Mr. Moseley were very close friends. I believe that
25 Mr. Moseley even talked about it almost like a brotherhood.

1 And that he was very close to Mr. Moseley's mother. So he
2 addressed it to Mr. Moseley's mother, who is Ms. Scott. And
3 in the letter he is giving an update to Mr. Moseley about the
4 status of the case to include who's saying what.

5 He even at the very back attaches a list of -- the
6 actual indictment and has handwritten who's cooperating, who's
7 on the run, adding defendants who weren't even shown on this
8 superseding indictment as to who is cooperating, good their
9 friend Mr. Alegrete, Mr. Johnson, who Your Honor heard from
10 during testimony. So he's clearly trying to keep Mr. Moseley
11 abreast of what's going on during it. There were a couple of
12 specific comments. For example, just below the signature
13 block is one of the key comments.

14 "Call my mom or Susan." Susan is Mr. Cooper's
15 girlfriend. "And any questions or concerning Keishan should
16 be cool." Now, again, he's talking about Keishan in third
17 party person because he thinks this is going to Keishan
18 Moseley's mother.

19 And then very importantly, "If he did" -- "If he did
20 the takes on the bank accounts, he can say that money came
21 from anywhere."

22 This is a very important statement there, Your
23 Honor. Because Mr. Cooper was aware that he was charged with
24 money laundering. There were money laundering charges. And
25 obviously one of the key things in a money laundering case

1 like this is, what is the source of the funds. The deposit
2 slip doesn't say "drug proceeds" on it.

3 And so Mr. Cooper is trying to influence what
4 Mr. Moseley will tell law enforcement, if and when he
5 eventually is asked about these bank accounts. Which, very
6 importantly, Mr. Moseley testified he opened on behalf of
7 Mr. Cooper. So he was receiving funds for Mr. Cooper.

8 And so to say that the money came from anywhere,
9 he's basically saying, it didn't come from me. The money in
10 your account did not come from me. He's trying to influence
11 the testimony of Mr. Moseley.

12 THE COURT: All right. I'm going to -- I'm going to
13 grant the objection to the obstruction enhancement. I do
14 believe that there's -- it's a very close call. The letter
15 does not have overt threats. It comes very close to crossing
16 the line. The government says it does cross the line with
17 respect to either unlawfully influencing a witness or
18 suborning perjury. I'm going to find that it comes just short
19 of the line and overrule the objection.

20 Having done that, it appears that -- or not
21 overruling the objection -- granting the objection to the
22 obstruction enhancement.

23 Which I think would make the -- based upon the other
24 rulings of the Court would make the offense level a 44, and
25 still reduced to 43 because that's as high as the guidelines

1 go.

2 Are there any other objections?

3 MR. MEGARO: Other than what I've laid out in the
4 letters, Your Honor, I believe the other big one would
5 probably be -- or the other two big ones would be the firearm.

6 THE COURT: And the drug amounts?

7 MR. MEGARO: And not only the drug -- well, that
8 would be --

9 THE COURT: -- and leadership.

10 MR. MEGARO: The drug amounts and the leadership
11 role, which I believe has been carefully laid out and briefed
12 by both parties.

13 THE COURT: It has, and I've read both sides, and I
14 recall the testimony at trial, and I find as to each that the
15 objection should be denied.

16 MR. MEGARO: Thank you.

17 THE COURT: Those are the findings of the Court. I
18 think based upon those findings, the statute requires a
19 mandatory life sentence. The guidelines -- advisory guideline
20 range is life. And having made those findings I'll be glad to
21 hear from you Mr. Megaro on behalf of Mr. Cooper at this time.

22 MR. MEGARO: Certainly, Your Honor.

23 Again, I've laid out a lot of the factual reasons
24 for a possible departure or mitigating factors for this Court
25 to take into consideration.

1 I did submit a number of letters of recommendation
2 from friends and family, and it's clear to me that Mr. Cooper
3 does have a very loving and caring family. They've been in
4 touch with me throughout my representation on the case.

5 Because of the distance -- they all reside in
6 California where Mr. Cooper is a resident of -- they were
7 unable to make the trip out across the country. But they --
8 they have shown their support, and I think it speaks volumes
9 that despite the amount of trouble that Mr. Cooper is in, that
10 these people have stood by him, continued to support him,
11 financially and emotionally.

12 I have laid out a number of mitigating factors for
13 the Court to consider and I cannot stress enough that this is
14 a case that did not involve any violence on Mr. Cooper's part.
15 There was no acts of robbery or any physical violence.

16 I understand there's an enhancement for a weapon,
17 but there was no use of that weapon or threatened use of that
18 weapon, which to me is one of the most important factors.

19 It's how a person comports themselves. If they're
20 in the drug business strictly for business purposes, that's
21 one thing. But if they employ violence as a means themselves
22 or directly or indirectly, or commit any violent acts, I think
23 that places them in a whole different category. And certainly
24 I don't think there's any indicia that Mr. Cooper used any
25 violence or threatened any violence.

1 Other than that, I will rely upon my written
2 submission and leave it to the Court's discretion.

3 I have spoken to my client about speaking today. He
4 understands there will be an appeal. I have gone over every
5 document that I filed on his behalf with respect to the
6 sentencing, as well as the government's responses to my
7 objections. And Mr. Cooper agrees with me that anything that
8 he could have said, I've laid out in my sentencing memorandum.
9 So based upon that he will not address the Court.

10 THE COURT: How old is Mr. Cooper?

11 DEFENDANT COOPER: I'm 34 years old.

12 THE COURT: All right. Thank you.

13 Mr. Cooper, I understand that you believe that
14 Mr. Megaro has laid out the case for you in terms of
15 mitigation, in terms of anything that can be said on your
16 behalf, but I want to make sure that that's your -- if you
17 wish to say anything, you're entitled to do that, and you have
18 that opportunity. And if you don't wish to say anything, I
19 have read everything that Mr. Megaro has filed on your behalf.

20 And so do you understand that you have a right to
21 say anything you wish to say to me at this time?

22 DEFENDANT COOPER: Yes, sir.

23 THE COURT: And do you care to say anything further?

24 DEFENDANT COOPER: I just want to see my family
25 again.

1 THE COURT: Thank you.

2 Mr. Kaufman.

3 MR. KAUFMAN: Your Honor, there's, I guess, not much
4 to say. There's a statutorily required sentence here. I want
5 to say that it's unfortunate that we're here in the
6 circumstance. Although Mr. Cooper was a major marijuana
7 trafficker, the firearms enhancement -- actually,
8 interestingly, while the act of violence that we know of
9 involving Mr. Cooper involved him initially as the victim of a
10 drug related robbery, and that's why he then armed himself.
11 But the danger inherent in arming himself, even to protect
12 himself from other drug dealers is serious and has to be
13 deterred.

14 His leadership role, the magnitude of the overall
15 investigation -- very importantly I have to say that we have,
16 throughout the process pretrial, sought his cooperation
17 against others, and quite honestly, Your Honor, even
18 post-trial. He did not testify, and we felt that we could
19 still have him as a credible witness if he was so inclined.
20 He declined to be a cooperator, even with our offer
21 post-sentencing -- I'm sorry, post-trial.

22 So we've done what we could. We're continuing the
23 investigation. Fortunately we've recently had some
24 breakthroughs going up the chain, even from Mr. Cooper. And
25 Your Honor will probably become aware of those pretty soon.

1 THE COURT: Thank you.

2 MR. KAUFMAN: Thank you, Your Honor.

3 THE COURT: Mr. Cooper, if you would please stand.

4 I've considered the information in the presentence
5 report, the arguments of the attorneys, the pleadings filed by
6 both sides, I also remember this trial quite well, presided
7 over it, heard the testimony of the witnesses, and will take
8 that into account in terms of announcing a sentence.

9 I do echo what I said earlier, and that is, the
10 Court is not comfortable with imposing a mandatory life
11 sentence on a 34 year old individual without some discretion
12 to consider the 3553(a) factors that a court normally is
13 entitled to consider.

14 Congress has essentially made the sufficient but not
15 greater than necessary sentence in this case through that
16 mandatory minimum sentence. The Court has no discretion. I'm
17 not sure what I would do if I had discretion, but the absence
18 of discretion is a difficult thing for the Court.

19 Nonetheless, the Court recalls the testimony,
20 believes that Mr. Cooper was involved in a very serious way in
21 a multi-million dollar drug trafficking organization, and that
22 he has a lengthy criminal history. That I believe his total
23 number of criminal history points were 17, even though several
24 of the convictions didn't register any points.

25 A criminal history category of 17 at such a young

1 age shows a degree of recidivism that makes a substantial
2 sentence necessary in order to protect the public from further
3 crimes of the defendant and to serve some of the other
4 purposes of sentencing.

5 Mr. Cooper's convictions go back to 1999 and were
6 largely theft and fraud related until the 2000 -- post 2000
7 period of time where he got a conviction for battery, a
8 marijuana conviction, and a second controlled substance
9 conviction.

10 And so his serious -- the serious nature of his
11 criminal history, the serious involvement of the defendant in
12 this multi-state drug trafficking organization all combine to
13 warrant a very substantial sentence.

14 Pursuant to the Sentencing Reform Act of 1984, it is
15 the judgment of the Court that the defendant, Corvain Cooper,
16 is hereby committed to the custody of the United States Bureau
17 of Prisons to be in prison for a term of life on Count One, a
18 term of 240 months on Count Two, and a term of 120 months on
19 Count Four to be served concurrently.

20 A life sentence is the mandatory minimum sentence
21 Congress has indicated is required in a case like this. The
22 Court overruled the Eighth Amendment challenge and the Court
23 is left with no discretion other than to impose a term of life
24 on Count One.

25 A substantial sentence is required to reflect the

1 seriousness of the offense, promote respect for the law, just
2 punishment, adequate deterrence, and as I said, importantly in
3 this case, to protect the public from further crimes of the
4 defendant. It takes into consideration the serious conspiracy
5 Mr. Cooper was involved in, as well as his lengthy criminal
6 history.

7 Further ordered that the defendant be required to
8 support all dependents as outlined in the presentence report
9 from prison earnings while incarcerated.

10 The Court calls to the attention of the custodial
11 authorities that the defendant has a history of substance
12 abuse and recommends that he be allowed to participate in any
13 available substance abuse treatment program while
14 incarcerated, and if eligible, receive the benefits of 18,
15 United States Code, Section 3672(e)(2).

16 In the event the defendant is released from
17 imprisonment, a 10 year term of supervised release is ordered.

18 Within 72 hours of release from the custody of the
19 Bureau of Prisons the defendant shall report in person to the
20 probation office in the district to which he is released.

21 While on supervised release he shall not commit
22 another federal, state, or local crime. He shall comply with
23 the standard conditions that have been adopted by the Court in
24 the Western District of North Carolina.

25 Further ordered that the defendant pay to the United

1 States a special assessment of \$300 due and payable
2 immediately.

3 The Court declines to impose a fine or interest in
4 this case but will order forfeiture of any interest the
5 defendant has in any property seized by the United States in
6 the course of this investigation.

7 With respect to the special assessment, if the
8 defendant is unable to pay that assessment immediately -- the
9 special assessment and the order that the defendant support
10 all dependents -- the Court will require the defendant to
11 participate in the Inmate Financial Responsibility Program.

12 Other than what we've discussed, is there any legal
13 reason why the sentence should not be imposed as stated?

14 MR. MEGARO: Your Honor, the Fourth Circuit has
15 taught me that if I don't register an objection after sentence
16 has been imposed, then it is waived for purposes of appeal.
17 So I would incorporate my prior objections and the Court's
18 ruling, as if I set forth just now.

19 I neglected to ask if the Court would consider
20 endorsing a recommendation that the Bureau of Prisons
21 designate him -- designate him for a facility in California so
22 that his family could visit him without undue hardship.

23 And finally, I had advised Mr. Cooper of his right
24 to appeal, and it looks like I will be the appellate attorney.
25 He has executed a in forma pauperis affidavit and a financial

1 affidavit which I will be filing. And I'm going to ask the
2 Court to consider waiving the cost of filing the fee -- the
3 filing fee for the notice of appeal and for the preparation of
4 the transcripts.

5 THE COURT: Very well. I'll take that up after
6 imposing the sentence.

7 Let me modify the sentence to this extent. The 10
8 year term is to Count One. There's a three year term on Count
9 Two and Count Four. Those terms are to run concurrent with
10 each other and the 10 year term.

11 I will make a recommendation to the Bureau of
12 Prisons that Mr. Cooper be designated to a facility as close
13 to -- is it central California -- is that --

14 MR. MEGARO: Yeah, central California.

15 THE COURT: As close to central California as
16 possible, consistent with the needs of the Bureau of Prisons.

17 MR. MEGARO: Thank you.

18 THE COURT: Let me inform Mr. Cooper of your right
19 to appeal your conviction and sentence.

20 Any notice of appeal must be filed within 14 days
21 from the entry of judgment. If you are unable to pay the cost
22 of an appeal, you may apply for leave to appeal with no cost
23 to you. And if you request, the Clerk of Court will prepare
24 and file a notice of appeal on your behalf.

25 Your attorney has indicated already that you are

1 prepared to make the necessary filings with respect to
2 indigency status, and we'll take that up when those motions
3 are filed.

4 But do you understand your rights to appeal as I've
5 just explained them to you?

6 DEFENDANT COOPER: Yes, sir.

7 THE COURT: All right. Anything further from either
8 side?

9 MR. MEGARO: No, Your Honor.

10 MR. KAUFMAN: No, Your Honor.

11 THE COURT: Then this matter is concluded.

12 Mr. Cooper, you're remanded to the custody of the
13 Marshals at this time.

14 (The matter is concluded at 2:37 p.m.)

15 (End of Proceedings.)

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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NORTH CAROLINA
CERTIFICATE OF OFFICIAL REPORTER

I, Laura Andersen, Federal Official Court Reporter, in
and for the United States District Court for the Western
District of North Carolina, 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 the 18th day of September, 2014.

S/Laura Andersen
Laura Andersen, RMR
Federal Official Court Reporter