

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA**

Richmond Division

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| UNITED STATES OF AMERICA |) | |
| |) | |
| v. |) | Criminal No. 3:09CR447 |
| |) | |
| JOHN W. WARWICK, |) | |
| |) | |
| Defendant. |) | |

GOVERNMENT’S SENTENCING MEMORANDUM

The United States of America, through its attorneys, Neil H. MacBride, United States Attorney for the Eastern District of Virginia, Denis J. McInerey, Chief of the Fraud Section of the United States Department of Justice’s Criminal Division, Rina Tucker Harris, Trial Attorney, and Michael S. Dry, Assistant United States Attorney, hereby submits its position with respect to sentencing factors. In light of the Fourth Circuit’s recent decision in *United States v. Derrick Lewis*, No. 09-4343, (May 27, 2010), the United States concurs with the Probation Officer’s determination that the 2002 Sentencing Guidelines apply in this case, the defendant’s Total Offense Level is 21, and that his Criminal History Category is I. *See* Pre-Sentence Report (“PSR”). The defendant’s guideline range is 37 to 46 months. *Id.* Pursuant to the factors contained in 18 U.S.C. § 3553(a) and for the reasons set forth below, the United States respectfully requests that this Court sentence the defendant to 40 months of incarceration.

Argument

“[I]n imposing a sentence after *Booker*, the district court must engage in a multi-step process. First, the court must correctly determine, after making appropriate findings of fact, the applicable guideline range.” *United States v. Moreland*, 437 F.3d 424, 432 (4th Cir. 2006).

“Next, the court must ‘determine whether a sentence within that range serves the factors set forth in § 3553(a) and, if not, select a sentence [within statutory limits] that does serve those factors.’”

Id. (quoting *United States v. Green*, 436 F.3d 449, 455 (4th Cir. 2006)). Thus,

a sentencing court must consider “the nature and circumstances of the offense and the history and characteristics of the defendant” and the need “to reflect the seriousness of the offense,” provide “just punishment,” “afford adequate deterrence,” “protect the public,” and “avoid unwarranted sentence disparities among defendants with similar records who have been found guilty of similar conduct.”

United States v. Hampton, 441 F.3d 284, 287 (4th Cir. 2006) (quoting 18 U.S.C. § 3553(a)).

I. The Applicable Guideline Sentence

The Government has no objections to the PSR. The PSR calculates the defendant’s Offense Level Total as 21. This calculation includes: (a) a base offense level of 10 pursuant to 2C1.1(a); (b) a 2-level enhancement for an offense involving more than one bribe payment; (c) a 12-level enhancement for the value of the payment is more than \$200,00 but not greater than \$400,000; (d) a 3-level reduction for acceptance of responsibility. The defendant’s criminal history category is I. Defendant Warwick’s applicable guideline range is 37 to 46 months. *See* Addendum to PSR Part D.

II. The Sentencing Factors of Section 3553(a)

In addition to the Sentencing Guidelines, the sentencing factors set forth in Title 18, United States Code Section 3553(a) support a sentence of 40 months in prison, which is within the applicable guideline range.

A. The Nature and Circumstances of the Offense

Defendant Warwick's offense stems from his participation in a conspiracy to make corrupt payments to Panamanian government officials, to conceal such payments, and to give an improper advantage to and enrich himself, Charles Jumet, his business partners, and his companies. Defendant Warwick is a United States citizen who was President of Ports Engineering Consultants Corporation (PECC), Overman Associates, and Overman de Panama during this conspiracy. He, Charles Jumet, and others authorized and caused corrupt payments to be made to Panamanian government officials, through shell corporations –Warmspell Holding Corporation and Soderville Corporation – and through the issuance of checks made payable to the “bearer.” The corrupt payments were paid in consideration for the Panamanian government awarding Ports Engineering Consultants Corporation (PECC) a contract to maintain the lighthouses and buoys along Panama's waterways outside the Canal Zone. The initial corrupt payments were made in 1997. An additional corrupt payment was issued to at least one Panamanian government official in 2003. The actions of defendant Warwick and others led to the Panamanian government officials receiving at least \$212,400 in corrupt payments. *See* PSR ¶ 32 at 4; Statement of Facts ¶¶ 17-19 at 5.

Defendant Warwick was an active participant in this conspiracy from the beginning. As President of PECC, defendant Warwick was responsible for overseeing PECC's business

activities. He allowed the Panamanian government officials, particularly the Deputy Administrator of Panama's National Ports Authority (hereinafter referred to as "Government Official B"), to have a significant role in PECC's operations, including its creation and the selection of its shareholders. Defendant Warwick and Charles Jumet, for instance, allowed Government Official B or his designee to establish PECC so that they could conduct business in Panama. *See* Statement of Facts ¶ 2 at 2. Defendant Warwick and Government Official B also negotiated the amount of ownership interest the defendant and Charles Jumet received. *See* PSR ¶ 20 at 12. He permitted Government Official B to control the distribution of the remaining ownership interests. *Id.* Moreover, defendant Warwick received assistance from the Administrator of APN (hereinafter referred to as "Government Official A") in submitting to APN a proposal outlining PECC's capabilities to provide engineering services to APN. *See* Statement of Facts ¶ 6 at 3.

In or about January 1997, without seeking any bids from other companies, Government Official A awarded PECC a provisional contract to collect tariffs for the maintenance of the lighthouse and buoys, to conduct engineering studies, and to maintain aids to navigation.

See Statement of Facts ¶ 7 at 3.

Defendant Warwick and Charles Jumet opened PECC an account at Lloyds Bank in Panama in January 1997. *See* PSR ¶ 19 at 12. They later used this account to issue corrupt payments to Panamanian government officials, through shell corporations and the issuance of checks payable to the "bearer." *See* Statement of Facts ¶ 8, at 3.

PECC falsely informed Lloyds Bank that PECC's shareholders were a Panamanian engineer, who purportedly owned 80 percent of the corporation's shares, and Overman de

Panama, which purportedly owned 20 percent of the shares. *See* PSR ¶ 19 at 12. The actual shareholders of PECC, however, were defendant Warwick and Charles Jumet, who each had owned 10 percent of PECC's shares and two shell corporations – Warmspell Holding Corporation and Soderville Corporation – which each had owned 30 percent of the shares. The remaining 20 percent of the shares belonged to three shareholders, who simply were referred to as “the bearer.” *See* PSR ¶ 20 at 12; Statement of Facts ¶ 11 at 4.

Warmspell Holding Corporation had belonged to Government Official B, whose relatives were corporate officers. *See* PSR ¶ 14 at 11. Soderville Corporation was created in September 1997, just three months before the corrupt payments were issued, and had belonged to Government Official A. *See* PSR ¶ 13 at 11; Statement of Facts ¶ 13.

In addition to serving as PECC's President, defendant Warwick was a member of PECC's Board of Directors. In March 1997, as part of the conspiracy, PECC's Board of Directors amended PECC's articles of incorporation so that PECC would be able to issue registered and bearer shares. *See* PSR ¶ 21 at 12; Statement of Facts ¶ 10. The purpose of the issuance of bearer shares was to conceal the identities of PECC's shareholders and the corrupt payments. Defendant Warwick had signed PECC stock certificates issued to the shareholders. In March 1997, defendant Warwick signed the certificates issued to Charles Jumet and himself. *See* PSR ¶ 21 at 21. In December 1997, as a further part of the conspiracy, defendant John Warwick had authorized and signed the stock certificates to be issued Soderville Corporation, Warmspell Holding Corporation, and the bearer. *See* PSR ¶ 21 at 12; Statement of Facts ¶ 13 at 4. The PECC stock certificate belonging to Soderville Corporation was provided to Government Official A. *Id.* The stock certificate issued to the bearer was given to a high

ranking elected Panamanian government official (hereinafter referred to as “Government Official C”). *Id.*

Shortly after PECC issued the stock certificates, the Panamanian government awarded PECC a 20-year concession to perform the same duties outlined in the provisional contract on or about December 18, 1997. *See* PSR ¶ 22 at 12.

The very next day defendant Warwick, Charles Jumet and others authorized PECC to issue dividend payments totaling \$300,000 to its shareholders, including the defendant, John Warwick, Soderville Corporation, and Warmspell Holding Corporation. *See* PSR ¶ 23 at 12. Both defendant Warwick and Charles Jumet received a payment of \$27,000. Soderville Corporation and Warmspell Holding Corporation each received a check in the amount of \$81,000. *See* PSR ¶ 26 at 13. The check payable to Soderville Corporation was deposited into an account belonging to Government Official A’s former law partner. *See* PSR ¶ 26 at 13; Statement of Facts ¶ 19 at 5. The check payable to Warmspell Holding Corporation was deposited in an account belonging to Government Official B and his family members. *See* PSR ¶ 26 at 13; Statement of Facts ¶ 18 at 5.

In December 1997, defendant Warwick, Charles Jumet, and others also authorized the “dividend” checks issued to the three shareholders identified as the “bearer” shareholders. *See* PSR ¶ 23 at 12. Defendant Warwick signed these checks that were drawn from PECC’s account at Lloyds Bank. *See* PSR ¶ 24 at 13. These checks were given to Government Official B for distribution. *Id.*

After the checks were issued, stop payment orders were issued to prevent the recipients from being able to cash the checks. *See* PSR ¶ 25 at 13. On December 24, 1997, defendant

Warwick had Lloyd Bank remove the stop payment order on the three checks, so that the recipients could receive the funds. *See* PSR ¶ 25 at 13; Statement of Facts ¶ 21 at 6. One of these checks payable to the bearer in the amount of \$18,000 was issued to Government Official C and deposited into an account belonging to him and his spouse. *See* PSR ¶ 25 at 13; Statement of Facts ¶ 17 at 5.

In or about late 1999, Panama's Comptroller General began investigating APN's decision to award PECC a contract without soliciting other bids. As a result of the investigation, with few exceptions, the Panama government did not make any payments to PECC from 1999 until 2003.

Government Official B had defendant Warwick removed as President of PECC and replaced him with Charles Jumet. *See* PSR ¶ 27 at 13. After his removal as President of PECC, defendant Warwick and Charles Jumet, subsequently agreed that PECC would pay \$109,536.50 to Overman de Panama. *See* PSR ¶ 28 at 13; Statement of Facts ¶ 23 at 6. Overman de Panama, a subsidiary of defendant Warwick's company, Overman Associates, performed in connection with the contracts that the Panamanian government awarded PECC.

Defendant Warwick later initiated a lawsuit in the Circuit Court for the City of Virginia Beach, Virginia in which Overman de Panama sought a monetary judgment of \$84,536.50 plus expenses and interest from PECC. *See* PSR ¶ 28 at 13-14; Statement of Facts ¶ 24 at 6. The court ordered PECC to pay Overman de Panama \$94,875.07 plus interest. *See* Statement of Facts ¶ 25 at 6.

In July 2003, when the Panamanian government resumed paying PECC, an additional corrupt payment was issued to Warmspell Corporation in the amount of \$32,400. *See* PSR ¶ 29,

at 14. This corrupt payment was deposited into an account belonging to Government Official B and his family.

Although defendant Warwick was no longer President of PECC in 2003, his actions enabled Government Official B to receive a corrupt payment in July 2003; defendant Warwick and Charles Jument allowed Warmspell Holding Corporation to become a shareholder of PECC in order to conceal Government Official B's identity, his receipt of corrupt payments in connection with the contract awarded to PECC, and his involvement in the operations of PECC.

Defendant Warwick also continued to reap benefits from the contract that the Panamanian government awarded PECC. Indeed, as noted above, PECC paid Overman de Panama a total of \$100,000 in June and July 2003. *See* PSR ¶ 28 at 14. Defendant Warwick received at least \$66,700 from these payments. *See Id*; Statement of Facts ¶¶ 27 - 28.

Defendant Warwick has pleaded guilty to Count One of the Indictment charging him with conspiracy to violate the Foreign Corrupt Practices Act in violation of 18 U.S.C. § 371, and paid forfeiture of \$331,000 in connection with this offense. The defendant has received a three-point reduction in his Offense Level pursuant to U.S.S.G. §§ 3E1.1(a) and (b). As such, defendant Warwick has already been afforded some leniency in the applicable guideline range of 37 to 46 months.

B. History and Characteristics of the Defendant

The PSR describes the personal and family history of the defendant. *See* PSR ¶¶ 38-64. None of that information justifies a variance from the guidelines sentence recommended in the PSR.

It is important to note that defendant Warwick has shown remorse regarding his role in the offenses.

C. The Seriousness of the Offense

Defendant Warwick's participation in this criminal scheme assisted high ranking Panamanian government officials in receiving money secretly in consideration for awarding a contract to PECC. Defendant Warwick's involvement in the scheme also benefitted him and his companies, which were able to receive an improper advantage in obtaining a maritime contract from the Panama government. Moreover, the scheme allowed Panamanian government officials to transfer an ordinary public function – the collection of tariffs – to a private company that was secretly controlled by a Panamanian government official.

D. The Need to Afford Adequate Deterrence

A sentence of 40 months in prison will be adequate to deter defendant Warwick from future misconduct. In addition to deterring the defendant, such a sentence will generally deter other potential criminals from engaging in similar conduct, particularly United States citizens seeking business from foreign governments.

E. The Need to Protect the Public from the Defendant's Future Conduct

The United States believes that a sentence of 40 months in prison is appropriate to protect the public from any future criminal behavior defendant Warwick may exhibit.

F. The Need to Avoid Unwarranted Sentencing Disparities

Defendant Warwick pleaded guilty and accepted responsibility for his actions. In light of defendant Warwick's role in the criminal scheme, a sentence within the guideline range of 37 to 46 months would not be disparate compared to the other related defendant, Charles Jumet. In contrast to Charles Jumet, defendant Warwick was effectively out of the scheme early. He participated in the criminal scheme from 1997 through July 2003. He did not continue to assist Panamanian government officials in concealing their involvement in this scheme or receipt of corrupt payments. He also did not make false statements to federal agents in an effort to conceal further the corrupt payments issued to the Panamanian government officials. Hence, given the scope of the defendant's criminal conduct, a sentence within the guideline range would not cause any unwarranted sentence disparities.

Conclusion

For the reasons stated above the United States respectfully asks this Court to sentence the defendant to 40 months imprisonment, and a special assessment of \$100.

Respectfully submitted,

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Dated: June 15, 2010

CERTIFICATE OF SERVICE

I hereby certify that on the 14th day of June 2010, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system, which will send a notification of such filing (NEF) to the following:

I also hereby certify that on the 15th day of June, 2010, I hand-delivered a true and accurate copy to the following:

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