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SCOTT A. SREBNICK, ESQ. (Fla. Bar No. 872910)
1899 South Bayshore Drive
Miami, Florida 33133
Telephone: (305) 285-9019
Facsimile: (305) 285-1761

LOCAL COUNSEL:
MICHAEL D. NASATIR, ESQ. (CA Bar No. 38121)
NASATIR, HIRSCH & PODBERESKY
2115 Main Street
Santa Monica, CA 90405
Telephone: (310) 399-3259
Facsimile: (310) 392-9029

Attorneys for Defendant
JAMES ROSEMOND

1999 DEC 23 PM 1:34
CENTRAL DISTRICT OF CALIF.
COURT

FILED

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,	)	CASE NO. CR 98-550-DT
)	
Plaintiff,	)	SENTENCING MEMORANDUM RE:
	)	GROUNDS FOR DOWNWARD
vs.	)	DEPARTURE AND ARGUMENTS
	)	IN MITIGATION OF SENTENCE;
JAMES ROSEMOND,	)	EXHIBITS "A-F"
)	
Defendant.	)	Date : January 10, 2000
	)	Time : 1:30 p.m.
	)	Place: Courtroom of the
	)	Hon. Dickran Tevrizian

Defendant James Rosemond, by and through undersigned counsel, respectfully moves this Court for a downward departure from the adjusted offense level calculated by the Probation Office. Mr. Rosemond respectfully requests that the arguments in support of a downward departure also be considered by the Court in mitigation of sentence and in support of a sentence at the low end of the applicable guideline range.

ENTER ON ICMS
JAN - 5 2000
[Signature]

[Handwritten mark]

1 MEMORANDUM OF POINTS AND AUTHORITIES

2 I.

3 INTRODUCTION

4 Defendant James Rosemond awaits sentencing by this Court on
5 two counts relating to his possession of one firearm in Los Angeles
6 on February 17, 1996. Sentencing is scheduled for January 10,
7 2000. In the most important respects, the James Rosemond who will
8 stand before the Court at sentencing is a different person than the
9 one depicted in the presentence report. He is more mature. He is
10 more disciplined. He is respectful of the law. In short, as we
11 hope to demonstrate at sentencing, Mr. Rosemond has turned his life
12 around and embarked upon a road to become a productive and
13 law-abiding member of society.

14 As counsel, we do not say this lightly. We are mindful that
15 Mr. Rosemond has a criminal history that may give the Court cause
16 for concern. We are also mindful that the Court has most certainly
17 heard many such arguments and representations from counsel, and
18 trusted those representations and given the defendant the benefit
19 of the doubt, only to be disappointed by a defendant's future
20 recidivist conduct. We believe this case is different. We will
21 endeavor to demonstrate to the Court at the time of sentencing that
22 James Rosemond, at this stage in his life, is worthy of the Court's
23 compassion and leniency. We will endeavor to demonstrate it
24 through testimony and other concrete evidence of his rehabilitation
25 over the last four years. This rehabilitation includes, but is not
26 limited to, his employment and success in the music industry (where
27 his talent and integrity are universally recognized), his providing
28 of assistance to North Carolina prison authorities to prevent an

1 escape attempt by inmates at a local facility where Mr. Rosemond
2 was housed in 1996, his willingness to be debriefed by state and
3 federal prosecutors and agents in New York in 1997 and 1998
4 regarding historical criminal investigations, and his exemplary
5 post-release conduct while on bond. We will endeavor to
6 demonstrate to the Court that imposing a significant
7 prison term upon James Rosemond will thwart that rehabilitation by
8 effectively ending his ability to earn a living in the music
9 industry -- an industry that has provided him with the
10 opportunity to rehabilitate.

11 As discussed in more detail below, this Court has the unique
12 ability and authority to account for this rehabilitation through a
13 downward departure based on several factors which are neither
14 encouraged nor discouraged under the Guidelines, the most
15 significant of which is the length of the government's delay in
16 prosecuting Mr. Rosemond. Because virtually the entire length of
17 the delay in prosecuting Rosemond while he was incarcerated on
18 other charges is subsumed within the guideline range recommended by
19 the Probation Office in this case, and because of the Court's
20 authority to grant a downward departure for other legally
21 valid reasons stated herein, this Court has considerable discretion
22 to fashion an appropriate sentence in this case. Indeed, the Court
23 can fashion whatever sentence it believes is fair in view of Mr.
24 Rosemond's punishment in other cases and his rehabilitation. We
25 hope to persuade the Court that the appropriate sentence includes
26 a downward departure of at least 38 months -- the length of time
27 between Mr. Rosemond's arrest on February 17, 1996, and his first
28 appearance in Los Angeles on the instant charges on April 12, 1999.

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II.

REASONS FOR GRANTING A DOWNWARD DEPARTURE

Since the Supreme Court's decision in Koon v. United States, 518 U.S. 81 (1996), courts have reconsidered how to approach requests for downward departures under U.S.S.G. §5K2.0. In Koon, the defendants were the police officers who had participated in the beating of Rodney King. Those officers had been acquitted in California state court of assault with a deadly weapon, and were thereafter tried and convicted in federal court of violating Rodney King's constitutional rights under color of law (based on the same conduct of which they had been acquitted). At sentencing, the district court departed downward from the applicable sentencing guideline range on four grounds. One was that the defendants' status as law enforcement officers and the extraordinary media coverage of the case made them unusually susceptible to abuse in prison. Another was that the defendants had already been forced to endure a lengthy trial in state court, of which they had been acquitted.

After the Ninth Circuit reversed the downward departure, the Supreme Court granted certiorari. The Supreme Court summarized the questions that a sentencing court should ask itself when considering a requested downward departure:

1. What features of this case, potentially, take it outside the Guidelines "heartland" and make of it a special, or unusual case?
2. Has the Commission forbidden departures based on those features?

1 3. If not, has the Commission encouraged departures
2 based on those features?

3 4. If not, has the Commission discouraged departures
4 based on those features?

5 Koon, 116 S.Ct. at 2045 (quoting United States v. Rivera, 994 F.2d
6 942, 949 (1st Cir. 1993)). "'If a factor is unmentioned in the
7 Guidelines, the court must, after considering the 'structure and
8 theory of both relevant individual guidelines and the Guidelines
9 taken as a whole,' decide whether it is sufficient to take the case
10 out of the Guideline's heartland." Id.

11 In this case, Mr. Rosemond seeks a departure based on three
12 factors which are not mentioned in the Guidelines. All three bases
13 for departure have been expressly approved by the Ninth Circuit.
14 And, as demonstrated below, the factual basis for each departure
15 ground takes Mr. Rosemond's case outside of the heartland of the
16 Sentencing Guidelines for the instant offense.

17 **A. Delay In Prosecution**

18 The Ninth Circuit, sitting en banc, has held that a district
19 court has the authority to grant a downward departure where the
20 government's delay in prosecuting an individual has deprived that
21 individual of the ability to serve a sentence concurrent with a
22 previously-imposed, but now discharged, term of imprisonment.
23 United States v. Sanchez-Rodriguez, 161 F.3d 556, 563-64 (9th Cir.
24 1998) (en banc). Here, the prosecutor has candidly admitted that
25 the government intentionally delayed bringing the indictment in
26 this case because it was awaiting the outcome of the federal
27 proceedings in North Carolina and the state proceedings
28 in New York. See Transcript of Suppression Hearing, 9/22/99, at

1 pp. 62-65. Indeed, the government only chose to bring this
2 prosecution when it decided that it was not satisfied with
3 the amount of incarceration Mr. Rosemond was to receive in those
4 two cases. See Transcript of Suppression Hearing, 9/22/99, at
5 p.62. Although the government's motive to delay might not justify
6 dismissal of the indictment (because of the absence of actual trial
7 prejudice), such a motive does justify a downward departure at
8 sentencing. After all, the government should not be permitted to
9 manipulate the sentencing guidelines through its timing of multiple
10 indictments for the sole purpose of, as this Court termed it,
11 taking a "cold shot" at Mr. Rosemond. See Transcript of
12 Suppression Hearing, 9/22/99, at p.65.

13 It is necessary to review recent history to understand why the
14 delay in prosecuting Mr. Rosemond justifies a downward departure in
15 this case. On February 17, 1996, Mr. Rosemond was arrested at the
16 Le Montrose hotel in Los Angeles, California, in connection with a
17 pending indictment in the Eastern District of North Carolina
18 charging him with, among other things, possession of a .45 caliber
19 Smith and Wesson firearm. See United States v. James Rosemond,
20 7:94-Cr-36 (Britt) (E.D.N.C.) (hereinafter "the North Carolina
21 federal case"). At the time of his arrest, there were also charges
22 pending against Mr. Rosemond in the State of New York for
23 possession of a firearm. See State of New York v. Tony Townsend
24 a/k/a James Rosemond, Case No. 3336/93 (hereinafter "the New York
25 state case"). On the date of his arrest in Los Angeles, the
26 arresting agents found a .38 caliber Amadeo Rossi firearm in Mr.
27 Rosemond's hotel room.

28 Thereafter, Mr. Rosemond was removed to North Carolina to face

1 his federal charges there. During pretrial litigation in the North
2 Carolina federal case, the government initially indicated that it
3 would seek to offer evidence, under Rule 404(b), of the .38 caliber
4 Amadeo Rossi firearm allegedly seized at the time of Mr. Rosemond's
5 arrest in Los Angeles. See Letter from AUSA Christine Dean to
6 Scott Srebnick (attached hereto as Exhibit A).¹

7 On October 15, 1996, Mr. Rosemond pleaded guilty in the North
8 Carolina federal case to one count of possession of a firearm by a
9 convicted felon, in violation of 18 U.S.C. §922(g)(1). On February
10 24, 1997, Mr. Rosemond was sentenced on the North Carolina
11 federal case. See Judgment and Commitment Order in United States
12 v. James Rosemond, 7:94-Cr-36 (Britt) (attached hereto as Exhibit
13 B). In connection with that North Carolina sentencing proceeding,
14 the prosecutor urged the district court to sentence Mr. Rosemond to
15 a minimum of fifteen years as an armed career criminal under 18
16 U.S.C. §924(e), but the district court rejected the government's
17 request, finding that Mr. Rosemond did not qualify for that status.
18 The prosecutor also urged the district court in North Carolina to
19 impose a sentence at the top of the 10-16 month guideline range,
20 expressly relying on the fact that Mr. Rosemond was in possession
21 of a firearm when he was arrested in Los Angeles -- the same
22 firearm that is the subject of the instant California federal case.
23 See Transcript of Sentencing of 2/24/97, in United States v.
24 Rosemond, Case No. 7:94-36-1-Cr-Britt (E.D.N.C.), at p.46 (attached
25 hereto as Exhibit C). The district court in North Carolina
26

27 ¹ However, the government later retreated from that
28 position because it had not received any reports from California
regarding the seizure of the weapon.

1 responded to the prosecutor's argument by imposing a 16 month
2 sentence, the top of the guideline range.

3 That 16 month sentence expired on April 11, 1997, and Mr.
4 Rosemond was discharged from federal custody into the custody of
5 the New York state authorities to face the charges pending in the
6 New York state case. In December 1998, Mr. Rosemond pleaded guilty
7 in the New York state case to a reduced charge of bond jumping. On
8 January 27, 1999, Mr. Rosemond was sentenced to a term of 1-½ to 3
9 years in prison on the New York state case. That term of
10 imprisonment expired on April 3, 1999.²

11 In the meantime, on May 26, 1998, the government sought and
12 obtained the instant two-count indictment (hereinafter "the
13 California federal case") against Mr. Rosemond arising out of the
14 aforementioned alleged seizure of the .38 caliber Amadeo Rossi
15 firearm upon his arrest in California on February 17, 1996.³ A
16 review of the grand jury transcript in this California federal case
17 reveals that the entire proceeding before the grand jury lasted
18 approximately 10 minutes. This California federal case was brought
19 27 months after the firearm was seized in Los Angeles, 15 months
20 after the district court in the North Carolina federal case
21 rejected the government's request that Mr. Rosemond be sentenced as
22 an armed career criminal, see Exhibit B, and 13 months after
23 Rosemond was released from federal custody into State of New York

24 ² Mr. Rosemond was not conditionally discharged on state
25 parole until June 28, 1999, upon his return to New York state after
26 his bond hearing in this case.

27 ³ The government subsequently obtained a First Superseding
28 Indictment in this California federal case, in or about July 1999,
to correct a factual inaccuracy in the original indictment
regarding Mr. Rosemond's prior convictions.

1 custody. Moreover, Mr. Rosemond was not brought to Los Angeles for
2 his first appearance until April 1999, 38 months after the seizure
3 of the firearm.

4 The 38 month delay between the agents' seizure of the firearm
5 and Mr. Rosemond's first appearance in California threatens to
6 actually prejudice Mr. Rosemond unless he is granted a downward
7 departure. Specifically, the delay has deprived Mr. Rosemond of
8 the ability to have any term of imprisonment imposed in this case
9 run concurrent with the now-discharged terms of imprisonment in the
10 North Carolina federal case or the New York state case. That
11 possibility would have been real because the government contended
12 in the North Carolina federal case that the two firearms were
13 related, having initially indicated its intent under Rule 404(b) to
14 admit in evidence in the North Carolina federal case the firearm
15 seized in California. See Exhibit A. Moreover, the PSR in North
16 Carolina treated Mr. Rosemond's possession of the firearm in this
17 case as part of the offense conduct in the North Carolina federal
18 firearm case and, as noted above, the prosecutor in North Carolina
19 relied on the firearm in this case in seeking to aggravate Mr.
20 Rosemond's sentence. See Exhibit C. Likewise, Mr. Rosemond's
21 state bail jumping case is related to this case because his jumping
22 of bail is what caused his fugitivity, an element of the
23 fugitive-in-possession charge.

24 "Because the concept of relevant conduct under the Guidelines
25 is **reciprocal**, [U.S.S.G.] §5G1.3 operates to mitigate the
26 possibility that the fortuity of two separate prosecutions will
27 grossly increase a defendant's sentence ... Significant safeguards
28 therefore protect [a defendant] against having the length of his

1 sentence multiplied by duplicative considerations of the same
2 criminal conduct ..." Witte v. United States, 115 S.Ct. 2199,
3 2208-09 (emphasis added) (citations omitted). Had Mr. Rosemond's
4 sentences in the North Carolina federal case and New York state
5 bail jumping case not already expired, the guidelines would have
6 required the imposition of a sentence in this case that runs
7 concurrent with, not consecutive to, the undischarged sentences in
8 those two cases. See generally U.S.S.G. §5G1.3(b). Indeed, AUSA
9 Standish candidly admitted at the suppression hearing that, in her
10 view, this case was not packaged together with the North Carolina
11 federal case because the North Carolina prosecutor "thought that,
12 you know, adding ours into the deal **wouldn't have added anything to**
13 **the sentencing guideline** and it just wasn't an issue." See
14 Transcript of Suppression Hearing, 9/22/99, at p.66 (emphasis
15 added). Thus, the prosecutor has acknowledged that, had the two
16 cases been brought at the same time, the conduct in this case would
17 not have added anything to the sentencing guideline range in the
18 North Carolina federal case.

19 Moreover, even if the three cases are not viewed as related,
20 had the government not delayed the prosecution, this Court would
21 have had the discretion to impose a sentence concurrent, or
22 partially concurrent, with the sentence in the New York state bail
23 jumping case, in order to achieve a total reasonable punishment for
24 all three offenses. See generally U.S.S.G. §5G1.3(c). Yet,
25 without a downward departure, Mr. Rosemond is essentially facing
26 three consecutive sentences the North Carolina federal case,
27 followed by the New York state bail jumping case, followed by this
28 California federal case. This is so, even though the Sentencing

1 Guidelines mandate consecutive sentences under limited
2 circumstances not applicable here:

3 If the instant offense was committed while the
4 defendant was serving a term of imprisonment
(including work release, furlough, or escape
5 status) or after sentencing for, but before
6 commencing service of, such term of
imprisonment, the sentence for the instant
offense shall be imposed to run consecutively
7 to the undischarged term of imprisonment.

8 See U.S.S.G. §5G1.3(a). Thus, a consecutive sentence is required
9 only where a defendant commits a new offense after he begins
10 serving a term of imprisonment on an earlier offense.

11 Here, Mr. Rosemond committed all three offenses -- the North
12 Carolina firearm, the State of New York bail jump, and the
13 California firearm -- prior to serving a term of imprisonment on
14 any one of the three. Under such circumstances, the Guidelines
15 require a consideration of what the total sentence would have been
16 had Mr. Rosemond been sentenced on all three offenses at the same
17 time. See U.S.S.G. §5G1.3(c). Had Mr. Rosemond been sentenced on
18 the North Carolina firearm case and the California firearm case in
19 a consolidated proceeding, the two cases would have been grouped
20 for sentencing purposes. See U.S.S.G. §3D1.2(d) (referencing
21 U.S.S.G. §2K2.1, the firearm possession guideline, as a guideline
22 which requires grouping of counts). Because only two firearms were
23 involved in the combined offenses, the upward adjustment for the
24 number of firearms would not have been applicable, see U.S.S.G.
25 §2K2.1(b)(1), and the guideline range for the combined offenses
26 would have been no higher than the guideline range for the
27 California firearm case alone -- the functional equivalent of a
28 concurrent sentence.

1 Accordingly, a downward departure of 38 months would ensure
2 that Mr. Rosemond does not serve any additional time on this
3 California federal case beyond that which he would have been
4 required to serve if he had been sentenced on both the North
5 Carolina federal case and the California federal cases at the same
6 time. This number -- 38 months -- represents the time between Mr.
7 Rosemond's arrest in California on February 17, 1996, and his first
8 appearance in Los Angeles on April 12, 1999.

9 **B. Extraordinary Post-Offense Rehabilitation**

10 Since his commission of the instant offense in February 1996,
11 and his subsequent incarceration, Mr. Rosemond has engaged in a
12 rehabilitative effort that marks a dramatic change from the person
13 depicted in the Presentence Report. At sentencing, we will request
14 that the Court recognize Mr. Rosemond's efforts through a downward
15 departure. The Ninth Circuit has held that a defendant's
16 post-offense and post-sentencing rehabilitation efforts can be a
17 basis for a downward departure if those rehabilitative efforts take
18 a case "out of the heartland" of the guidelines. United States v.
19 Green, 152 F.3d 1202, 1206-08 (9th Cir. 1998). As we set forth
20 below and hope to demonstrate more comprehensively at sentencing,
21 this change has manifested itself in several tangible ways.

22 **1. Employment And Career Advancement**

23 By all accounts, Mr. Rosemond has a bright future in the music
24 industry. His forte is recognizing talent, refining that talent,
25 and managing musicians, singers and other artists in a way that
26 maximizes their talent and opportunities. Barry Hankerson, owner
27 and president of Blackground Entertainment and a leader in the
28 music industry, will testify at sentencing regarding Mr. Rosemond's

1 abilities. Mr. Hankerson has put his money where his mouth is by
2 offering Mr. Rosemond steady and financially rewarding employment
3 in his company, assisting Blackground Entertainment in managing
4 artists such as Toni Braxton, R. Kelly, Genuine, and numerous
5 others.

6 Mr. Hankerson will testify that Mr. Rosemond has been a
7 hardworking, dedicated, and loyal employee, who works tirelessly to
8 help promote the careers of aspiring musicians. Mr. Hankerson will
9 testify that Mr. Rosemond takes his work very seriously and has an
10 extremely bright future in the music industry. Mr. Hankerson will
11 testify that Mr. Rosemond, in the short time since he began his
12 employment with Blackground, has become an indispensable member of
13 the company. Mr. Hankerson will testify that he views himself as
14 Mr. Rosemond's mentor, and would be willing to do everything and
15 anything to assure the Court that Mr. Rosemond will continue to
16 stay positive within the law and pursue his dreams. Finally, prior
17 to sentencing, Mr. Rosemond will provide the Court with letters
18 from individuals who have known Mr. Rosemond for years, have
19 interacted with him since his release on bond, have witnessed a
20 change in his attitude and character, and will attest to these
21 facts. These individuals have expressed their willingness to stand
22 by Mr. Rosemond and assist in his continued rehabilitation in any
23 way that the Court deems appropriate.

24 2. Assisting Jail Authorities In North Carolina

25 In September 1996, while incarcerated at the Vance County
26 Detention Center awaiting trial in North Carolina, Mr. Rosemond
27 placed himself at risk of severe personal injury when he alerted
28 jail officials that four inmates were preparing to escape from the

1 facility. Mr. Rosemond's efforts prevented the escape and the
2 inmates were caught. Lieutenant Ronald Morris of the Vance County
3 Detention Center testified under oath about Mr. Rosemond's
4 cooperation at Mr. Rosemond's sentencing hearing in North Carolina.
5 See Transcript of Sentencing of 2/24/97, in United States v.
6 Rosemond, Case No. 7:94-36-1-Cr-Britt (E.D.N.C.), at pp. 33-37
7 (attached hereto as Exhibit D). Mr. Rosemond was forced to spend
8 several days in solitary confinement in North Carolina because jail
9 officials were concerned that the other inmates would seek
10 retribution against Mr. Rosemond for alerting the officials about
11 the planned escape attempt. Mr. Rosemond's willingness to assist
12 in the prevention of the escape demonstrates that he is an
13 individual who has turned his life around.

14 3. Cooperation With New York State Authorities

15 In 1997, while in state custody in New York, Mr. Rosemond
16 agreed to be debriefed by New York state law enforcement
17 authorities who were investigating the circumstances of Mr.
18 Rosemond's posting of bail in Rikers' Island and subsequent bail
19 jump. Mr. Rosemond entered into a cooperation agreement with the
20 State of New York, see Proffer Agreement between James Rosemond and
21 New York District Attorney (attached hereto as Exhibit E), and
22 provided the authorities with information about the jail officials
23 who altered the paperwork to allow Mr. Rosemond to post bail. Mr.
24 Rosemond was truthful and complete about his own involvement and
25 the involvement of others. In fact, Mr. Rosemond, at the direction
26 of law enforcement and as part of his cooperation, attempted to
27 make several monitored phone calls to one of the corrections
28 officers. However, apparently because of the passage of time, the

1 corrections officer, who was no longer employed in New York, was
2 reluctant to speak with Mr. Rosemond. Nonetheless, Mr. Rosemond
3 pleaded guilty to his own involvement in the bail jumping incident.
4 Mr. Rosemond's demonstrated willingness to cooperate and assist law
5 enforcement is further evidence of his rehabilitation and desire to
6 turn his life around.

7 4. Cooperation With New York Federal Authorities

8 In 1998, Mr. Rosemond was contacted by federal authorities in
9 New York who were seeking to enlist his cooperation in connection
10 with an historical criminal investigation in the Eastern District
11 of New York. Mr. Rosemond entered into a cooperation proffer
12 agreement with the United States Attorney's Office in the Eastern
13 District. See Proffer Agreement between James Rosemond and United
14 States Attorney's Office (attached hereto as Exhibit F). With his
15 counsel present, Mr. Rosemond was debriefed at length by federal
16 agents and prosecutors. Mr. Rosemond answered all of their
17 questions, was truthful, and corroborated information that the
18 government had received from other reliable sources. Although the
19 government did not call Mr. Rosemond as a witness at the trial in
20 that case, the defendant was convicted, thus confirming the
21 accuracy of the information provided by Mr. Rosemond to the
22 government. This is further evidence of Mr. Rosemond's
23 extraordinary rehabilitation.

24 5. Conduct While Released On Bond

25 While out on bail for the past six months, Mr. Rosemond has
26 complied with all of his strict federal bond conditions. He has
27 maintained steady employment, adhered to his electronic monitoring
28 and house arrest requirements, attended all court proceedings as

1 required, reported to federal pretrial services as required, and
2 tested negative on all urinalysis exams. In the meantime, he has
3 complied with the requirements of the New York state parole
4 authorities as well as federal probation out of the Eastern
5 District of North Carolina. This exemplary conduct represents a
6 dramatic change from the person depicted in the Presentence Report.

7 8 C. Conditions Of Pretrial Release

9 In addition to being powerful evidence of his rehabilitation,
10 Mr. Rosemond's compliance with his strict conditions of release
11 provides another basis for downward departure. Specifically, Mr.
12 Rosemond respectfully requests a downward departure based on the
13 fact that he has been, and will be, under restrictions much more
14 severe than the typical defendant released on bond.

15 Prior to the en banc decision in United States v.
16 Sanchez-Rodriguez, 161 F.3d 556, 563-64 (9th Cir. 1998) (en banc),
17 the Ninth Circuit had held that a district court may not depart
18 downward to take into account the time defendant spent in in-house
19 detention prior to sentencing. See United States v. Daggao, 28
20 F.3d 985, 987 (9th Cir. 1994). In Sanchez-Rodriguez, however, the
21 Ninth Circuit expressly overruled Daggao on the basis that Daggao's
22 absolute bar to downward departure was "no longer appropriate given
23 the Supreme Court's intervening decision in Koon." Accordingly,
24 this Court has the authority to grant a downward departure if it
25 believes that Mr. Rosemond's conditions of pretrial release were
26 significantly restrictive such that he should be given some credit
27 for that time.

28 In April 1999, this Court admitted Mr. Rosemond to bail

1 pursuant to stringent conditions of release.⁴ Because of a
2 detainer out of the State of New York, Mr. Rosemond was not
3 released until June 1999. As noted above, for the past six months,
4 Mr. Rosemond has been under house arrest, with electronic
5 monitoring (at his own cost), and has been permitted to leave his
6 home only for employment-related activities and legal appearances.
7 He has had a 7:00 p.m. curfew every night. He has complied with
8 **all** of the conditions of his pretrial release. He has appeared in
9 Court as directed. He has reported, both in person and
10 telephonically, to Pretrial Services in New York as directed. He
11 has not violated his curfew even once. He has been gainfully
12 employed. If the Court agrees with the stipulation of the parties
13 to permit Mr. Rosemond to remain under house arrest pending his
14 appeal to the Ninth Circuit, it is likely that Mr. Rosemond will
15 spend up to another year (or more) on house arrest. Thus, while
16 Mr. Rosemond has been technically "free" on bail (and is
17 appreciative), it is fair to state that his conditions have been
18 far more stringent than the conditions facing the typical defendant
19 released on bail. In light of that fact, we will ask the Court at
20 sentencing to grant Mr. Rosemond a downward departure that would,
21 in effect, amount to credit of 1 day for every 2 days that Mr.
22 Rosemond has spent under house arrest and will likely have spent
23 during the pendency of his appeal. Specifically, we will be asking
24 the Court for a downward departure of one (1) offense level as a
25 result of the time that Mr. Rosemond will have spent under house
26 arrest.

27 ⁴ Mr. Rosemond is certainly appreciative of the trust that
28 the Court placed in him.

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III.

CONCLUSION

For the foregoing reasons, Mr. Rosemond requests that the Court grant a reasonable downward departure from the applicable guidelines range.

DATED: December 28, 1999

Respectfully submitted,

LAW OFFICES OF
SCOTT A. SREBNICK

NASATIR, HIRSCH & PODBERESKY,
A Professional Law Corporation

By:



MICHAEL D. NASATIR
ATTORNEYS FOR DEFENDANT
JAMES ROSEMOND



Janice McKenzie ()

United States Attorney
Eastern District of North Carolina

310 New Bern Avenue
Suite 800 Federal Building
Raleigh, North Carolina 27601-1461

Telephone 919/856-4530
Criminal FAX 919/856-4487
Civil FAX 919/856-4821

May 21, 1996

Scott A. Srebnick
Attorney at Law
1899 South Bayshore Drive
Miami, Florida 33133

Re: James Rosemond


Dear Mr. Srebnick:

You requested information on 404(b) evidence. The information already provided to you on his arrest under the name Tony Townsend will be used. This is not really 404(b), as it identifies the gun allegedly used in the shooting in Wilmington. Also, I understand that he was in possession of a firearm when arrested in California. I do not have those reports, although they are supposed to be on their way. If that is what the reports show, then I would intend to use that also. I will give you copies of the reports as soon as I get them, unless you already have them from the attorney who represented him in California.

You are already in possession of the expert witness material, that being the statement by Special Agent Corpening who will discuss the manufacture and movement in interstate commerce of the firearm found on your client when he was arrested as Tony Townsend. David Mann and others will give their opinion that the substance bought from your client was crack cocaine.

Sincerely,

JANICE MCKENZIE COLE
United States Attorney


CHRISTINE WITCOVER DEAN
Assistant United States Attorney
Criminal Division

cc: ~~Roy Black~~
Attorney at Law
201 S. Biscayne Boulevard, Suite 1300
Miami, Florida 33131

EXHIBIT "A"

019

UNITED STATES DISTRICT COURT

Eastern District of North Carolina

UNITED STATES OF AMERICA
V.
JAMES J. ROSEMOND

JUDGMENT IN A CRIMINAL CASE
(For Offenses Committed On or After November 1, 1987)
Case Number: 7:94CR00036-1

(a.k.a. JIMMY ACE, TONY TOWNSEND, JAMES ROSEMOUND, JAMES JIMMY ROSEMOND, JIMMY ROSEMOUND, JIMMY ROSEMOND, JAMES J. ROSEMOND, JAMES ROSEMOND, SAM VOGEL)

ROY BLACK, SCOTT SREBNICK, ROBERT HURLEY
Defendant's Attorney

(Name of Defendant)

THE DEFENDANT:

- pleaded guilty to count(s) 2
- pleaded nolo contendere to count(s) _____
which (was) (were) accepted by the court.
- was found guilty on count(s) _____
after a plea of not guilty.

<u>Title/Sect</u>	<u>Nature of Offense</u>	<u>Date Offense Concluded</u>	<u>Count Number(s)</u>
18 USC §922(g)	Possession of a Firearm by a Felon.	07/12/91	2

The defendant is sentenced as provided in pages 1 through 5 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

- The defendant has been found not guilty on count(s) _____ and is discharged as to such count(s).
- Count(s) 1,3 (is)(are) dismissed on the motion of the United States.

IT IS FURTHER ORDERED that the defendant shall notify the United States attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid.

Defendant's Soc. Sec. No.: 076-62-6250
Defendant's Date of Birth: 02/05/65

Defendant's Mailing Address:

2711 AVENUE D
BROOKLYN NY 11226

Defendant's Residence Address:

2711 AVENUE D
BROOKLYN NY 11226

02/24/97
Date of Imposition of Judgment
W. Earl Britt
Signature of Judicial Officer

W. EARL BRITT
UNITED STATES JUDGE
Name & Title of Judicial Officer

2-25-97

I certify the foregoing to be a true and correct copy of the original.
David W. Daniel, Clerk
United States District Court
Eastern District of North Carolina
By *W. Earl Britt*
Deputy Clerk

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a term of 16 months.

16 months on Count(s): 2

[x] The court makes the following recommendations to the Bureau of Prisons:

The court recommends that the defendant be required to support all dependents from prison earnings while incarcerated. Such funds should be forwarded to Cynthia Reed at 18 Spartan Street, Staten Island, New York, 10303.

[X] The defendant is remanded to the custody of the United States Marshal.

[] The defendant shall surrender to the United States Marshal for this district.

[] at _____ am/pm on _____.

[] As notified by the United States Marshal.

[] The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons

[] before 2:00 p.m. on _____.

[] As notified by the United States Marshal.

[] As notified by the probation office.

RETURN

I have executed this judgment as follows:

Defendant delivered on _____ to _____ at _____

_____, with a certified copy of this judgment.

UNITED STATES MARSHAL

By _____
Deputy Marshal

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of: 36 months.

36 months as to Count(s): 2

The defendant shall report to the probation office in the district to which the defendant is released within 72 hours of release from the custody of the Bureau of Prisons. While on supervised release, the defendant shall not commit another federal, state, or local crime and shall not illegally possess a controlled substance. The defendant shall not possess a firearm or destructive device. The defendant shall comply with the standard conditions that have been adopted by this court (set forth below). If this judgment imposes a fine or a restitution obligation, it shall be a condition of supervised release that the defendant pay any such fine or restitution that remains unpaid at the commencement of the term of supervised release in accordance with the schedule of payments set forth in the financial obligation portion of this Judgment. The defendant shall comply with the following additional conditions:

The defendant shall not incur new credit charges or open additional lines of credit without the approval of the probation office.

The defendant shall provide the probation office with access to any requested financial information.

The defendant shall participate as directed in a program approved by the probation office for the treatment of narcotic addiction, drug dependency, or alcohol dependency which will include urinalysis testing or other drug detection measures and may require residence or participation in a residential treatment facility.

The defendant shall consent to a warrantless search by a United States probation officer or, at the request of the probation officer, any other law enforcement officer, of his/her person and premises, including any vehicle, to determine compliance with the conditions of this judgment.

The defendant shall participate in a vocational training program as directed by the probation office.

The defendant shall pay a total fine of \$ 1,650.00, without interest, to the United States in monthly installments of not less than \$ 50.00 per month during the term of supervised release.

STANDARD CONDITIONS OF SUPERVISION

- 1) the defendant shall not leave the judicial district without the permission of the court or probation officer;
- 2) the defendant shall report to the probation officer as directed by the court or probation officer and shall submit a truthful and complete written report within the first five days of each month;
- 3) the defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer;
- 4) the defendant shall support his or her dependents and meet other family responsibilities;
- 5) the defendant shall work regularly at a lawful occupation unless excused by the probation officer for schooling, training, or other acceptable reasons;
- 6) the defendant shall notify the probation officer within 72 hours of any change in residence or employment;
- 7) the defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any narcotic or other controlled substance, or any paraphernalia related to such substances, except as prescribed by physician;
- 8) the defendant shall not frequent places where controlled substances are illegally sold, used, distributed or administered;
- 9) the defendant shall not associate with any persons engaged in criminal activity, and shall not associate with any person convicted of a felony unless granted permission to do so by the probation officer;
- 10) the defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view of the probation officer;
- 11) the defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer;
- 12) the defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court;
- 13) as directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics, and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.

DEFENDANT: JAMES J. ROSEMOND
CASE NUMBER: 7:94CR00036

FINANCIAL OBLIGATIONS

The defendant shall pay the following total financial penalties in accordance with the schedule of payments set out below:

<u>Count</u>	<u>Assessment</u>	<u>Fine</u>	<u>Restitution</u>
2	\$ 50.00	\$ 1,650.00	\$.00
Totals:	\$ 50.00	\$ 1,650.00	\$.00

FINE

The fine includes any costs of incarceration and/or supervision.

The court has determined that the defendant does not have the ability to pay interest in full.

It is ordered that:

The interest requirement is waived.

The interest requirement is modified as follows:

RESTITUTION

Each restitution payment shall be divided proportionately among the payees named unless specified in the priority payment column below. Restitution shall be paid to the following persons in the following amounts:

<u>Name of Payee</u>	<u>Amount of Restitution</u>	<u>Priority Order of Payment</u>
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SCHEDULE OF PAYMENTS

Payments shall be applied in the following order: (1) assessment; (2) restitution; (3) fine principal; (4) fine costs; (5) interest; (6) penalties.

The total fine and other monetary penalties shall be paid as follows:

- in full immediately.
- in full not later than _____.
- in installments which the probation officer shall establish and may periodically modify provided that the entire financial penalty is paid no later than 5 years after release from incarceration, if incarceration is imposed. If probation is imposed, not later than the expiration of probation.
- in monthly installments of \$ _____ over a period of _____ months. The probation officer may periodically modify the payment schedule, provided the penalty is paid in full in accordance with the term specified above. The first payment is due 30 days after the date of this judgment. The second and subsequent payments are due monthly thereafter.
- in installments of not less than \$ 50.00 per month during the term of supervised release.

All financial penalty payments are to be made to the U.S. Courts Fine Center, P.O. Box 198559, Atlanta, GA 30384, except those payments made through the Bureau of Prisons' Inmate Financial Responsibility Program.

The defendant shall pay interest on any fine of more than \$2,500, unless the fine is paid in full before the fifteenth day after the date of the judgment, pursuant to 18 U.S.C. §3612(f). All of the above payment options are subject to penalties for default and delinquency pursuant to 18 U.S.C. §3612(g).

Unless otherwise ordered by the court, any financial penalty imposed by this order shall be due and payable during the period of incarceration, with any unpaid balance to be a condition of supervised release. Any financial penalties collected while the defendant is incarcerated shall be reported by the Bureau of Prisons to the Clerk of the Court and the probation officer. The probation officer shall notify the United States District Court, the Clerk of the Court, and the United States Attorney's Office of the payment schedule and any modifications to that schedule.

STATEMENT OF REASONS

The Court adopts the factual findings and guideline application in the presentence report.

OR

The Court adopts the factual findings and guideline application in the presentence report except

The Court sustains the defendant's objection regarding Page 16, Paragraph 55 of the Presentence Report and finds that 2K2.1(c)(1) does not apply.

Guideline Range Determined by the Court:

Total Offense Level: 10

Criminal History Category: III

Imprisonment Range: 10 to 16 months and months consecutive.

Supervised Release Range: 2 to 3 years

Fine Range: \$ 2,000.00 to \$ 20,000.00

Fine waived or imposed below the guideline range, because of inability to pay.

Restitution: \$

Full restitution is not ordered for the following reason(s):

Although provisions of the Victim and Witness Protection Act are applicable, as there was no identifiable victim associated with this offense, restitution is waived.

The sentence is within the guideline range, that range does not exceed 24 months, and the court finds no reason to depart from the sentence called for by application of the guidelines.

OR

The sentence is within the guideline range, that range exceeds 24 months, and the sentence is imposed for the following reasons(s):

OR

The sentence departs from the guideline range

upon motion of the government, as a result of defendant's substantial assistance.

for the following reason(s):

1 PROOF OF SERVICE

2 STATE OF CALIFORNIA)
3) ss.
4 COUNTY OF LOS ANGELES)

5 I am employed in the County of Los Angeles, State of Cali-
6 fornia; I am over the age of 18 and not a party to the within
7 action; my business address is 2115 Main Street, Santa Monica,
8 California 90405.

9 On August 16, 1999, I caused the foregoing document described
10 as **ERRATA TO DEFENDANT'S MOTION TO DISMISS SUPERSEDING INDICTMENT**
11 **BASED ON PREINDICTMENT DELAY** to be served on all interested parties
12 in this action by placing a true copy thereof enclosed in a sealed
13 envelope addressed as follows:

14 Gail J. Standish
15 Assistant United States Attorney
16 1400 United States Courthouse
17 312 North Spring Street
18 Los Angeles, CA 90012

19 I am "readily familiar" with the firm's practice of
20 collection and processing correspondence for mailing. Under that
21 practice it would be deposited with the United States Postal
22 Service on that same day with postage thereon fully prepaid at
23 Santa Monica, California in the ordinary course of business. I am
24 aware that on motion of the party served, service is presumed
25 invalid if postal cancellation date or postage meter date is more
26 than one day after date of deposit for mailing in affidavit.

27 X Via Hand-Delivery.

28 _____ Via Federal Express/Express Mail.

_____ X Via Fax.

Executed on August 16, 1999, at Santa Monica, California.

I declare that I am employed in the office of a member of the
Bar of this Court at whose direction the service was made.

24 
25 SHARON DICKERSON

1 UNITED STATES DISTRICT COURT
2 EASTERN DISTRICT OF NORTH CAROLINA
3 SOUTHERN DIVISION

4 UNITED STATES OF AMERICA,)
5 V.) 7:94-CR-36-1-BR
6 JAMES J. ROSEMOND,)
7 DEFENDANT.)

8
9 SENTENCING
10 FEBRUARY 24, 1997
11 BEFORE THE HONORABLE W. EARL BRITT
12 U. S. DISTRICT JUDGE

13 APPEARANCES:

14 FOR THE GOVERNMENT:

15 MS. CHRISTINE DEAN
16 ASST. U.S. ATTORNEY
17 310 NEW BERN AVE.
18 RALEIGH, NC 27613

19 FOR THE DEFENDANT:

20 MR. ROY BLACK
21 ATTORNEY AT LAW
22 1899 S. BAYSHORE DR.
23 MIAMI, FL 33133

24 MR. ROBERT HURLEY, ESQ.
25 ATTORNEY AT LAW
26 RALEIGH, NC

27 COURT REPORTER: DONNA J. TOMAWSKI
28 STENOTYPE WITH COMPUTER AIDED TRANSCRIPTION

1 MR. BLACK: YOUR HONOR, IT'S NOT A MOTION FOR
2 DEPARTURE BECAUSE WE'RE NOT ENTITLED TO A DEPARTURE. WE
3 ONLY ASK THE COURT IN DETERMINING THE SENTENCE WITHIN THE
4 GUIDELINE RANGE TO TAKE INTO CONSIDERATION THAT
5 MR. ROSEMOND --

6 THE COURT: VERY WELL, I WILL BE GLAD TO HEAR
7 THEN YOUR ARGUMENT AS TO APPROPRIATE SENTENCE.

8 MR. BLACK: YOUR HONOR PLEASE, I WOULD ASK THE
9 COURT, WITHIN THE GUIDELINE SENTENCE, TO GIVE MR. ROSEMOND
10 CREDIT FOR CALLING IN AND FRUSTRATING THE ATTEMPTED ESCAPE
11 AT THE VANCE COUNTY JAIL. OTHER THAN THAT, WE HAVE
12 NOTHING ELSE TO PRESENT TO THE COURT.

13 THE COURT: MR. ROSEMOND, ANYTHING YOU WANT TO
14 SAY BEFORE I PASS SENTENCE?

15 MR. ROSEMOND: NO, YOUR HONOR.

16 THE COURT: MS. DEAN.

17 MS. DEAN: YOUR HONOR, I WOULD THINK HE OUGHT TO
18 GET THE 16 MONTHS. HIS CRIMINAL HISTORY IS A LEVEL III
19 BUT I THINK THAT REALLY UNDERSTATES THE KIND OF ACTIVITIES
20 HE'S BEEN ENGAGED IN. HE HAS BEEN INVOLVED IN VIOLENT
21 ACTIVITY SINCE 1981 AND CONTINUED TO BE THAT IN LIGHT OF
22 THE FACT WHEN HE WAS ARRESTED HE WAS STILL IN POSSESSION
23 WITH ANOTHER WEAPON, EVEN THOUGH HE WAS IN ESCAPE STATUS.
24 I THINK THERE WOULD BE A BASIS TO UPWARDLY DEPART ON THE
25 FACT HIS CRIMINAL HISTORY UNDERSTATES HIS ACTIVITIES AND

1 THE CHANCE THAT HE'S GOING TO GO -- TO BE RIGHT BACK
2 INVOLVED IN CRIME AGAIN, PROBABLY SHOOT SOMEBODY ELSE.
3 BUT YOUR HONOR, AT LEAST ASK THAT HE BE GIVEN 16 MONTHS.

4 THE COURT: ALL RIGHT, STAND UP. PURSUANT TO
5 THE SENTENCING REFORM ACT OF 1984, IT IS THE JUDGMENT OF
6 THE COURT THAT THE DEFENDANT, JAMES J. ROSEMOND, IS HEREBY
7 COMMITTED TO THE CUSTODY OF THE BUREAU OF PRISONS TO BE
8 IMPRISONED FOR A TERM OF 16 MONTHS. PURSUANT TO THE PLEA
9 AGREEMENT, COUNTS ONE AND THREE ARE DISMISSED.

10 UPON RELEASE FROM IMPRISONMENT, THE DEFENDANT SHALL
11 BE PLACED ON SUPERVISED RELEASE FOR A TERM OF THREE YEARS.
12 WITHIN 72 HOURS OF RELEASE FROM THE CUSTODY OF THE BUREAU
13 OF PRISONS, THE DEFENDANT SHALL REPORT IN PERSON TO THE
14 PROBATION OFFICE IN THE DISTRICT TO WHICH HE IS RELEASED.

15 WHILE ON SUPERVISED RELEASE, HE SHALL NOT COMMIT
16 ANOTHER FEDERAL, STATE, OR LOCAL CRIME AND SHALL NOT
17 ILLEGALLY POSSESS A CONTROLLED SUBSTANCE; HE SHALL NOT
18 POSSESS A FIREARM OR DESTRUCTIVE DEVICE; HE SHALL COMPLY
19 WITH THE STANDARD CONDITIONS THAT HAVE BEEN ADOPTED BY THE
20 COURT AND THE FOLLOWING ADDITIONAL CONDITIONS.

21 HE SHALL PARTICIPATE AS DIRECTED IN A PROGRAM
22 APPROVED BY THE PROBATION OFFICE FOR THE TREATMENT OF
23 NARCOTIC ADDICTION, DRUG DEPENDENCY OR ALCOHOL DEPENDENCY,
24 WHICH INCLUDES URINALYSIS TESTING OR OTHER DRUG DETENTION
25 MEASURES AND MAY REQUIRE RESIDENCE OR PARTICIPATION IN A

1 RESIDENTIAL TREATMENT FACILITY. HE SHALL CONSENT TO
2 WARRANTLESS SEARCHES BY UNITED STATES PROBATION OFFICER
3 OR, AT THE REQUEST OF THE PROBATION OFFICER, ANY OTHER LAW
4 ENFORCEMENT OFFICER OF HIS PERSON OR PREMISES, INCLUDING
5 ANY VEHICLE, TO DETERMINE COMPLIANCE WITH THE CONDITIONS
6 OF THIS JUDGMENT. HE SHALL PARTICIPATE IN A VOCATIONAL
7 TRAINING PROGRAM AS DIRECTED BY THE PROBATION OFFICE. HE
8 SHALL PAY A TOTAL FINE OF \$1,650 WITHOUT INTEREST TO THE
9 UNITED STATES IN MONTHLY INSTALLMENTS OF NOT LESS THAN 50
10 DOLLARS PER MONTH DURING THE TERM OF SUPERVISED RELEASE.

11 ALTHOUGH PROVISIONS OF THE VICTIM AND WITNESS
12 PROTECTION ACT ARE APPLICABLE, AS THERE WAS NO
13 IDENTIFIABLE VICTIM ASSOCIATED WITH THE OFFENSE,
14 RESTITUTION IS WAIVED. FURTHER ORDERED HE PAY A SPECIAL
15 ASSESSMENT IN THE AMOUNT OF 50 DOLLARS, DUE IMMEDIATELY.
16 THE COURT RECOMMENDS HE BE REQUIRED TO SUPPORT HIS
17 DEPENDENTS FROM PRISON EARNINGS. THOSE FUNDS TO BE SENT
18 TO CYNTHIA REED, 18 SPARTAN STREET, STANTON ISLAND, NEW
19 YORK 10303.

20 MR. BLACK, HE WILL GET CREDIT FOR TIME IN FEDERAL
21 CUSTODY. I DON'T HAVE TO STATE THAT.

22 MR. BLACK: YES, SIR. THANK YOU.

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END OF TRANSCRIPT

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CERTIFICATE

THIS IS TO CERTIFY THAT THE FOREGOING TRANSCRIPT OF
PROCEEDINGS TAKEN AT THE CRIMINAL SESSION OF UNITED STATES
DISTRICT COURT IS A TRUE AND ACCURATE TRANSCRIPTION OF THE
PROCEEDINGS TAKEN BY ME IN MACHINE SHORTHAND AND
TRANSCRIBED BY COMPUTER UNDER MY SUPERVISION.

THIS THE 11 DAY OF April 1997.

Donna J. Tomawski

DONNA J. TOMAWSKI
OFFICIAL COURT REPORTER

1 UNITED STATES DISTRICT COURT
2 EASTERN DISTRICT OF NORTH CAROLINA
3 SOUTHERN DIVISION

4 UNITED STATES OF AMERICA,)
5 V.) 7:94-CR-36-1-BR
6 JAMES J. ROSEMOND,)
7 DEFENDANT.)
_____)

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10 FEBRUARY 24, 1997
11 BEFORE THE HONORABLE W. EARL BRITT
12 U. S. DISTRICT JUDGE

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25 ATTORNEY AT LAW
26 RALEIGH, NC

27 COURT REPORTER: DONNA J. TOMAWSKI
28 STENOTYPE WITH COMPUTER AIDED TRANSCRIPTION

1 MR. BLACK: YOUR HONOR, WE HAVE ONE OTHER
2 WITNESS. IT'S NOT REGARDING THIS ISSUE, IT'S AS TO THE
3 SENTENCING. SHOULD I CALL HIM NOW?

4 THE COURT: YES, ANY WITNESS YOU HAVE ON ANY
5 ISSUE.

6 MR. BLACK: LIEUTENANT MORRIS.
7 RONALD D. MORRIS, BEING FIRST DULY SWORN, TESTIFIED AS
8 FOLLOWS DURING DIRECT EXAMINATION:

9 BY MR. BLACK:

10 Q. LIEUTENANT, WHERE DO YOU WORK?

11 A. VANCE COUNTY DETENTION CENTER.

12 Q. HOW LONG HAVE YOU WORKED AT THAT POSITION?

13 A. I HAVE BEEN THERE PRESENTLY ABOUT FOUR YEARS.

14 Q. NOW, ON SEPTEMBER 7, 1996 AT APPROXIMATELY 7 O'CLOCK
15 IN THE EVENING, DID YOU RECEIVE A CALL ABOUT A MATTER THAT
16 WAS UNDER YOUR JURISDICTION IN THE JAIL?

17 A. YES.

18 Q. WOULD YOU PLEASE RECITE TO THE COURT WHAT CALL YOU
19 RECEIVED, FROM WHOM, AND WHAT THE SUBSTANCE OF THE CALL
20 WAS?

21 A. RECEIVED A CALL FROM A FEMALE FROM OUT OF STATE
22 INDICATING THAT SHE WAS THE GIRLFRIEND OF MR. ROSEMOND.

23 Q. WHAT DID SHE TELL YOU?

24 A. SHE STATED THAT SHE HAD JUST GOT OFF THE PHONE WITH
25 MR. ROSEMOND AND HE WAS BEING SOLICITED TO PARTICIPATE IN

1 AN ATTEMPTED ESCAPE FROM THE DETENTION CENTER.

2 Q. DID SHE TELL YOU MR. ROSEMOND ASKED SHE CALL YOU,
3 THAT SHE REPORT THIS?

4 MS. DEAN: OBJECTION TO LEADING.

5 THE COURT: OVERRULED. YOU MAY ANSWER THE
6 QUESTION.

7 A. YES.

8 Q. AND AS A RESULT OF THIS PHONE CALL, DID YOU DO ANY
9 INVESTIGATION?

10 A. WHAT WE DID IS WE WAITED APPROXIMATELY 45 MINUTES AND
11 THEN MYSELF AND THREE OTHER OFFICERS WENT DOWN AND
12 REMOVED, PHYSICALLY REMOVED MR. ROSEMOND FROM THE DORM.

13 Q. WHY DID YOU REMOVE MR. ROSEMOND?

14 A. I FELT AT THAT TIME IT WAS BEST TO LOCATE HIM SOME
15 PLACE WHERE I COULD DISCUSS DIRECTLY WITH HIM AND NOT IN
16 FRONT OF OTHER PEOPLE WHAT THE TEXT OF THE PHONE CALL WAS.

17 Q. WHAT INFORMATION DID YOU RECEIVE?

18 A. AT THAT TIME HE INDICATED TO ME ONE ROOM IN OUR DORM,
19 C DORM, WHERE HE WAS LOCATED, SOME LOCAL STATE INMATES
20 WERE ATTEMPTING TO ESCAPE.

21 Q. AS A RESULT OF WHAT HE TOLD YOU, DID YOU THEN
22 INVESTIGATE THAT MATTER?

23 A. YES, SIR.

24 Q. WHAT DID YOU FIND?

25 A. WE LOCATED THE ROOM UPSTAIRS IN C DORM OF THE VANCE

1 COUNTY DETENTION CENTER. THERE WAS DAMAGE TO THE WINDOW,
2 A MIRROR HAD BEEN REMOVED FROM THE WALL AND THEY WERE
3 USING IT AS A WEAPON ON THE CONCRETE, NOT ON AN OFFICER,
4 TO CHIP AWAY THE WINDOW AND THAT, IN FACT, IT COULD BE
5 CONCEIVED AS AN ATTEMPTED ESCAPE.

6 Q. WAS THERE ALSO A DOOR LOCKED THAT WAS REMOVED?

7 A. YES, SIR.

8 Q. ALL RIGHT. DID YOU FIND THAT THERE WAS ANYTHING DONE
9 TO THE FENCE OR FENCES AROUND THE INSTITUTION TO AID IN
10 THIS ESCAPE?

11 A. THERE WAS NOT ANYTHING TO AID IN THAT PARTICULAR
12 ESCAPE. WHAT HAPPENED, WE HAD SOME NEW FENCING INSTALLED
13 AND WHEN THEY TOOK THE TWO FENCINGS ON TOP OF EACH OTHER,
14 THEY DIDN'T MARRY THEM TOGETHER AND WE FOUND OUT THIS FACT
15 FROM ONE OF THE STATE INMATES THAT WAS GOING TO ATTEMPT TO
16 ESCAPE WHEN WE MOVED HIM TO THE FACILITY ABOUT 12 HOURS
17 LATER.

18 Q. DID THAT INMATE CONFESS THEY WERE ATTEMPTING TO
19 ESCAPE?

20 A. YES, THE ONE DID.

21 Q. IS IT NOT TRUE, SIR, THAT YOU WERE ABLE TO DISCOVER
22 THIS ESCAPE ATTEMPT THROUGH THE TELEPHONE CALL CAUSED TO
23 BE MADE BY MR. ROSEMOND?

24 A. IT WAS DIRECT ASSISTANCE, YES.

25 Q. ALL RIGHT. WERE THREE OF THE PEOPLE INVOLVED IN THE

1 ESCAPE ATTEMPT CHARLES ASKEW, JUNIOR; CHARLES PUCKETT; AND
2 WILLIAM PERKINSON?

3 A. ASKEW, PUCKETT AND PERKINSON, YES, SIR.

4 MR. BLACK: YOUR HONOR, I WOULD PROFFER THAT WE
5 OBTAINED THE CRIMINAL RECORDS OF ALL THREE OF THEM.

6 MR. ASKEW'S IS 28 PAGES LONG; MR. PUCKETT'S IS 21 PAGES
7 LONG; AND MR. PERKINSON'S IS TEN PAGES LONG. OTHER THAN
8 THAT, WE HAVE NO FURTHER QUESTIONS.

9 THE COURT: CROSS-EXAMINATION.

10 CROSS-EXAMINATION

11 BY MS. DEAN:

12 Q. LIEUTENANT MORRIS, DID YOU DIRECTLY CALL THE MARSHAL
13 TO TELL HIM OR TELL THEM ABOUT ANY OF THIS?

14 A. NOT AT THAT TIME.

15 Q. IN FACT, IT WAS NOT UNTIL THE MARSHALS MADE INQUIRY
16 THAT YOU TOLD THEM ABOUT THE -- OR US ABOUT THIS
17 TRANSACTION; IS THAT CORRECT?

18 A. YES, MA'AM.

19 Q. AND THERE WERE ACTUALLY FOUR PEOPLE IN THAT ROOM; IS
20 THAT CORRECT?

21 A. YES, MA'AM.

22 Q. AND HOW MANY WERE CHARGED WITH ESCAPE?

23 A. THAT I CAN'T BE ACCURATE. HE WAS TURNED OVER -- AT
24 THE TIME I WENT UP TO HAVE WARRANTS, THE SHERIFF WANTED IT
25 TURNED OVER TO THE DETECTIVES AND THE DETECTIVES HANDLED

1 IT FROM THERE. I THINK TWO OF THE FOUR WERE CHARGED.

2 Q. DO YOU KNOW WHETHER OR NOT THEY GOT ADDITIONAL TIME
3 AS A RESULT OF THIS ESCAPE?

4 A. I CAN'T ANSWER THAT.

5 Q. DO YOU KNOW WHAT CHARGES THESE PEOPLE WERE IN JAIL ON
6 ORIGINALLY?

7 A. NO, MA'AM.

8 Q. DO YOU RECALL WHETHER ONE OF THEM WAS THERE FOR MINOR
9 DRUG CHARGES AND SOME OF THE OTHERS FOR BREAKING AND
10 ENTERING?

11 A. IT'S POSSIBLE.

12 Q. BUT YOU DON'T RECALL YOURSELF?

13 A. NO, MA'AM.

14 Q. DO YOU RECALL IF THEY WERE THERE FOR ANYTHING
15 VIOLENT?

16 A. NOT TO MY KNOWLEDGE.

17 MS. DEAN: I HAVE NO FURTHER QUESTIONS.

18 REDIRECT EXAMINATION

19 BY MR. BLACK:

20 Q. LIEUTENANT, IS IT OKAY TO ESCAPE DEPENDING ON THE
21 SERIOUSNESS OF YOUR CHARGES?

22 A. I CAN'T ANSWER THAT QUESTION.

23 MR. BLACK: I HAVE NOTHING ELSE, YOUR HONOR.

24 THE COURT: STEP DOWN.

25 MR. BLACK: WE HAVE NO FURTHER EVIDENCE AT THIS

AGREEMENT

With respect to the meeting of James Rosemond ("Client") and his attorneys, Scott Screebnick, Esq., and Robert Fogelnest, Esq., with Diane Kiesel, Assistant District Attorney for the New York County District Attorney's Office (the "District Attorney"), the following understanding exists:

(1) Should any prosecutions be brought against Client by the District Attorney, the prosecution will not offer in evidence on its case-in-chief, or in connection with any sentencing proceeding for the purpose of determining an appropriate sentence, any statements made by Client at the meeting, except in a prosecution for hindering prosecution or perjury.

(2) Notwithstanding item (1) above: (a) the prosecution can use information derived from the meeting directly or indirectly for the purpose of obtaining leads to other evidence, which evidence may be used in any prosecution of Client by the District Attorney; and (b) the prosecution may use the statements of Client at the meeting and all evidence obtained directly or indirectly therefrom for the purpose of cross-examination should Client testify, or to rebut any evidence offered by or on behalf of Client in connection with the trial and/or sentencing, should any prosecution of Client be undertaken.

(3) It is further understood that this Agreement is limited to the statements made by Client at the meeting and do not apply to any oral, written or recorded statements made by Client at any other time. No understanding, promises, agreements and/or conditions have been entered into with respect to the meeting other than those set forth in this Agreement and none will be entered into unless in writing and signed by all parties.

Dated: New York, New York
April 24, 1997

ROBERT M. MORGENTHAU
District Attorney of
New York County

By:



Diane Kiesel
Assistant District Attorney



James Rosemond



Witness

PROFFER FOR
6/18/98

PROFFER AGREEMENT

With respect to the meeting of James Rosemond ("Client") and his/her attorney, Scott Srebnick, Esq., with Postal Inspector Stephen Korinka and Gavin Shea, SA PM and USA Klem/Judy Phillips of the United States Attorney's Office, to be held at the offices of the United States Attorney for the Eastern District of New York ("the Office") on 10/20/98 ("the meeting"), the following understandings exist:

(1) In any prosecution brought against Client by the Office, the Office will not offer in evidence in its case-in-chief or at sentencing any statements made by Client at the meeting, except in a prosecution for false statements, obstruction of justice, or perjury.

(2) Notwithstanding item (1) above: (a) the Office may use information derived directly or indirectly from the meeting for the purpose of obtaining leads to other evidence, which evidence may be used in any prosecution and sentencing of Client by the Office; and (b) should any prosecution of Client be undertaken (i) the Office may use statements made by Client at the meeting and all evidence obtained directly or indirectly therefrom for the purpose of cross-examination should Client testify, or to rebut any evidence offered, or factual assertions made, by or on behalf of Client at any stage of the criminal prosecution (including but not limited to detention hearing, trial or sentencing), and (ii) the Office may disclose any statements made by Client at the meeting to the Probation Department and the Court, except that pursuant to Sentencing Guideline § 1B1.8 such statements will not be used to determine or to depart upwardly from the defendant's Sentencing Guideline range.

(3) It is further understood that this agreement is limited to the statements made by Client at the meeting and does not apply to any oral, written or recorded statements made by Client at any other time. No understandings, promises, or agreements have been entered into with respect to the meeting other

than those set forth in this agreement, and none will be entered into unless memorialized in writing and signed by all parties.

Dated: Brooklyn, New York
10/20, 1998

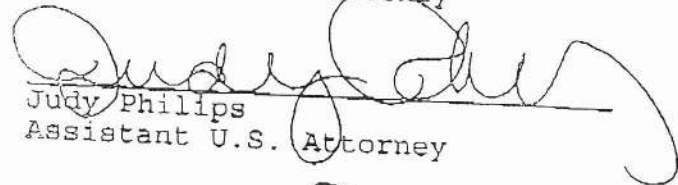
ZACHARY W. CARTER
United States Attorney
Eastern District of New York

By:



Lisa J. Klem
Assistant U.S. Attorney

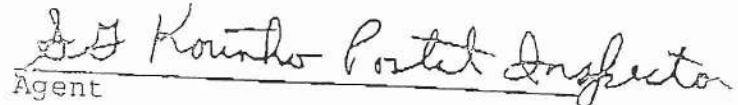
By:



Judy Phillips
Assistant U.S. Attorney


Client
Agent

u-20-98 
Attorney for Client


Agent

PROOF OF SERVICE

STATE OF CALIFORNIA)
) ss.
COUNTY OF LOS ANGELES)

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; my business address is 2115 Main Street, Santa Monica, California 90405.

On December 29, 1999, I served the foregoing document described as SENTENCING MEMORANDUM RE: GROUNDS FOR DOWNWARD DEPARTURE AND ARGUMENTS IN MITIGATION OF SENTENCE; EXHIBITS "A-F" in this action by placing a true copy thereof enclosed in a sealed envelope addressed as follows:

Gail J. Standish, Esquire
Assistant United States Attorney
1400 United States Courthouse
312 North Spring Street
Los Angeles, California 90012

Alexis Carney, United States Probation Officer
United States Probation Department
312 No. Spring Street, 6th Floor
Los Angeles, California 90012

 (BY MAIL) I caused such envelope with postage thereon fully prepaid to be placed in the United States mail at Santa Monica, California.

XXX (BY PERSONAL SERVICE) I caused such envelope to be delivered by hand to the offices of the addressee.

Executed on December 29, 1999, at Santa Monica, California.

 (State) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

XXX (Federal) I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.



C.J. Bender

~~APPEALS~~
 CIVIL SECTION
XXX CRIMINAL SECTION

FILED
CLERK, U.S. DISTRICT COURT
DEC 28 1999
CENTRAL DISTRICT OF CALIFORNIA
BY *[Signature]* DEPUTY

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA

PLAINTIFF(S),

v.

JAMES JIMMY ROSEMOND AKA TONY
TOWNSEND, JIMMY ACE, SAMUEL
FOGEL

DEFENDANT(S).

D.C. CASE No. CR-98-0550-DT

C.A. CASE No. _____

RECEIPT FOR
REPORTER'S TRANSCRIPT

The following reporter's transcripts have been received and filed:

<u>Date of Hearing</u>	<u>Date Filed</u>	<u>Reporter</u>
September 22, 1999	December 28, 1999	Lori Muraoka - Lutz 125

CLERK, U. S. DISTRICT COURT

By *[Signature]*
Deputy Clerk

Check here if the filing of these transcripts satisfies the Transcript Designation and Ordering Form for the purposes of appeal. *[To be checked by Deputy Clerk in Appeals Section]*

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UNITED STATES DISTRICT COURT
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ORIGINAL

00-50150

1

United States District Court
Central District of California
Los Angeles, California

FILED CLERK, U.S. DISTRICT COURT
APR 19 2000
CENTRAL DISTRICT OF CALIFORNIA BY DEPUTY

UNITED STATES OF AMERICA

Plaintiff

vs.

JAMES ROSEMOND akas TONY
TOWNSEND, JIMMY ACE, SAMUEL
FOGEL

Defendant

Docket No. CR-98-0550-DT

Los Angeles, California
March 6, 2000
3:13 p.m.

SENTENCING UPON CONDITIONAL PLEAS TO COUNTS ONE AND
TWO OF FIRST SUPERSEDING INDICTMENT
(DISPOSITION OF UNDERLYING INDICTMENT)

THE HONORABLE DICKRAN TEVRIZIAN, PRESIDING
UNITED STATES DISTRICT COURT JUDGE

COURT RECORDER:
LORI MURAOKA
U.S. District Court

TRANSCRIPTION BY:
LUTZ & COMPANY, INC.
100 West Lemon
Suite 103
Monrovia, California 91016
(626) 303-1113

Proceedings recorded by electronic sound recording, transcript
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Entered on ICMS 4/20/2000 *[Signature]*

APPEARANCES:

FOR THE PLAINTIFF:

ALEJANDRO MAYORKAS
United States Attorney
DAVID C. SCHEPER
CHIEF, CRIMINAL DIVISION
GAIL STANDISH
Assistant United States Attorney
1300 United States District
Courthouse
312 North Spring Street
Los Angeles, California 90012
(213) 894-4242

FOR THE DEFENDANT:

SCOTT A. SREBNICK
Law Offices of Scott A. Srebnick
1899 South Bayshore Drive
Miami, Florida 33133
(305) 295-9019

FOR THE DEFENDANT:

RICHARD G. HIRSCH
Nasatir, Hirsch & Podberesky
Main Street Law Building
2115 Main Street
Santa Monica, California 90405
(310) 399-3259

1 PROCEEDINGS BEGIN AT 3:13 P.M.

2 (Court is Called to Order)

3 THE CLERK: Criminal case 98-550-DT, United States
4 of America versus James Jimmy Rosemond.

5 MS. STANDISH: Good afternoon, Your Honor. Gail
6 Standish, appearing on behalf of the Government.

7 MR. SREBNICK: Good afternoon, Your Honor. Scott
8 Srebnick, on behalf of James Rosemond, who is present in
9 Court.

10 MR. HIRSCH: And Richard Hirsch, on behalf of Mr.
11 Rosemond, also, Your Honor. Good afternoon.

12 (Pause)

13 THE COURT: All right. With regard to Mr. Rosemond,
14 today is the day set for sentencing in this matter. Is there
15 any legal cause or reason why the Court should not proceed?

16 MR. SREBNICK: None from the defense.

17 THE COURT: I have in my possession the original
18 pre-sentence report with a dictation date of November 16th,
19 1999, and a disclosure date of November the 29th, 1999, that
20 indicates the Defendant entered pleas of guilty to Counts 1
21 and 2 on September 2nd, 1999 for the following crimes: 18
22 United States Code Section 922(g)(1), felon in possession of a
23 firearm, Count 1, 18 United States Code Section 922(g)(2),
24 fugitive in possession of a firearm, Count 2.

25 Both Counts 1 and 2 are Class C felonies. I also

1 have an addendum to the pre-sentence report with a dictation
2 date and disclosure date of February 29th, 2000.

3 Counsel, have you received copies of both the
4 original pre-sentence report and the addendum to the pre-
5 sentence report?

6 MR. SREBNICK: Yes, Your Honor.

7 THE COURT: Have you reviewed both the pre-sentence
8 report and the addendum to the pre-sentence report prior to
9 coming into court today?

10 MR. SREBNICK: Yes, I have.

11 THE COURT: Has your client reviewed the pre-
12 sentence report and addendum to the pre-sentence report prior
13 to coming into court today?

14 MR. SREBNICK: Yes, he has, Judge.

15 THE COURT: And have you and your client discussed
16 the contents of the pre-sentence report and the addendum to
17 the pre-sentence report?

18 MR. SREBNICK: Yes, we have.

19 THE COURT: And I ask this of all defendants: did
20 your client need or utilize the services of an interpreter in
21 this case?

22 MR. SREBNICK: He did not.

23 THE COURT: Mr. Rosemond, let me verify the
24 information with you. Was the pre-sentence report and the
25 addendum to the pre-sentence report disclosed to you?

1 MR. ROSEMOND: Yes, it was, Your Honor.

2 THE COURT: And have you had an opportunity to
3 review the pre-sentence report and the addendum to the pre-
4 sentence report prior to coming to court today?

5 MR. ROSEMOND: Yes, I have.

6 THE COURT: And have you had an opportunity to
7 discuss the contents of the pre-sentence report and the
8 addendum to the pre-sentence report with your attorney prior
9 to coming into court today?

10 MR. ROSEMOND: Yes, I have, Your Honor.

11 THE COURT: And again, I ask this of all defendants:
12 did you need to utilize the services of an interpreter at all
13 in this matter?

14 MR. ROSEMOND: No, I haven't.

15 THE COURT: All right. In addition to the pre-
16 sentence report and the addendum to the pre-sentence report, I
17 also received the following. On December 15th the Government
18 filed a document entitled, "Government's Concurrence with the
19 Pre-Sentence Report."

20 On December the 17th Defendant filed a document
21 entitled, "Defendant's Objections to the Pre-Sentence Report."
22 On December the 29th, the defense filed another document
23 entitled, "Sentencing Memorandum Re Grounds for Downward
24 Departure and Arguments in Mitigation of Sentence."

25 On February the 11th, 2000, the Government filed

1 another sentencing memorandum entitled, "Government's
2 Sentencing Position in Opposition to the Defendant's Request
3 for a Downward Departure."

4 (Pause)

5 THE COURT: All right. I received a report in
6 February, February the 22nd, year 2000, from the pre-trial
7 services indicating that in their opinion Mr. Rosemond had
8 violated the terms and the conditions of his release. And
9 then on February 28th the Government filed a document
10 entitled, "Government's Filing of Criminal Histories of Barry
11 Hankerson, Fred Brathwaite, Marion Rosemond, in Opposition to
12 the Defendant's Request for Downward Departure."

13 On March 2nd, 2000, the Government filed another
14 document entitled, "Government's Filing of Executed
15 Declaration of Judith Phillips in Opposition to Defendant's
16 Request for a Downward Departure." And finally, on March 3rd,
17 2000, the Defendant filed a Defendant's Reply Memorandum
18 Regarding Sentencing.

19 (Pause)

20 THE COURT: Okay. Let's go through the report.

21 MR. SREBNICK: Your Honor, if I may.

22 THE COURT: Yes.

23 MR. SREBNICK: The Court omitted one document that
24 we filed on February the 10th, 2000, and I have a file-stamped
25 copy with me, and that's Defendant's Notice of Filing Letters

1 in Support of Downward Departure and in Mitigation of
2 Sentence.

3 THE COURT: Those are the letters that were -- the
4 Government filed the criminal histories of Barry Hankerson,
5 Fred Brathwaite and Marion Rosemond?

6 MR. SREBNICK: Marion Rosemond, yes, Judge. In
7 fact, we submitted fifteen letters to the Court as part of
8 this filing and in response to those letters the Government
9 submitted the criminal histories of three individuals who the
10 Government believes are three of the individuals that we have
11 submitted letters -- that submitted letters to the Court.

12 THE COURT: When did you file -- I don't have that
13 document.

14 MR. SREBNICK: I have a file-stamped copy and I'll
15 be happy to approach the --

16 THE COURT: I'm sure you do, but I don't have one.
17 Let me look. February what date?

18 MR. SREBNICK: February 10th.

19 THE COURT: No, I don't have it. I have January
20 4th, 2000, and then February 11th, 2000, but I don't have a
21 February 10th.

22 (Pause)

23 THE COURT: Okay. I've read the documents that
24 you've furnished to me. Let's go through the report as
25 presented by the probation department. On page 6 of the

1 report, the addendum to the report, it says as there are no
2 ex post facto issues, the November 1st, 1998, edition of the
3 Guidelines Manual was used in this case. The base offense
4 level: The applicable Guideline for violation of 18 United
5 States Code Section 922(g)(1) and 18 United States Code
6 Section 922(g)(2) is found in Section 2(k)(2.1). Section
7 2(k)(2.1)(a)(4) prescribes a base offense level of 20 if the
8 Defendant has one prior felony conviction of either a crime of
9 violence or a controlled substance.

10 The probation department has cited the docket case
11 number 3K021053, indictment number 4696 1983, as a prior
12 felony conviction for a crime of violation, and the base
13 offense then becomes Level 20. With regard to specific
14 offense characteristics the probation department is
15 recommending a two level increase under Section
16 2(k)(2.1)(b)(4), which provides that if any firearm was stolen
17 or had an altered or obliterated serial number the offense
18 level is increased by two levels.

19 In the instant offense Mr. Rosemond possessed a
20 Amadeo Rossi .38 caliber revolver, which had been stolen, and
21 that serves as the basis for a two level upward increase. The
22 adjusted offense level then becomes a Level 22 and the
23 probation department is recommending a three level downward
24 adjustment for acceptance of responsibility, two points under
25 3(e)(1.1)(a) and an additional one level under

1 3(e)(1.1)(b)(2), bringing the total offense level to a Level
2 19.

3 Criminal history. The conviction of October 16th,
4 1984, results in three points. The conviction of February
5 24th, 1997, results in three points. The conviction of
6 January 27th, 1999, results in three points. That's nine
7 criminal history points.

8 A two level increase has been applied by the
9 probation department pursuant to Section 4(a)(1.1)(d) because
10 the instant offense occurred while Mr. Rosemond was under a
11 criminal justice sentence, namely, parole in Docket
12 No.3K021053, indictment number 4696-83.

13 Total number of criminal history points is eleven.
14 Ten to twelve criminal history points establishes a criminal
15 history of category V. On strict application of the
16 Guidelines a total offense level of 19 and a criminal history
17 category of Roman Numeral Number V, the sentencing range is
18 fifty-seven to seventy-one months.

19 Now, you have asked for departures. The first
20 objection and request is as follows: The Defendant argues
21 that he should have been assessed only five criminal history
22 points for a corresponding criminal history category of Roman
23 Numeral Number III. Why do you argue that?

24 MR. SREBNICK: Your Honor, under Section 4(a)(1.2)
25 of the Guidelines only prior sentences are counted. And a

1 prior sentence is defined as a sentence previously imposed for
2 conduct not part of the instant offense.

3 THE COURT: You claim that this North Carolina
4 conviction and the New York State bail-jumping conviction
5 should be assessed criminal history points, as the underlying
6 conduct of both offenses constitutes relevant conduct to the
7 instant offense, or does not constitute relevant conduct?

8 MR. SREBNICK: Well, essentially, my position,
9 Judge, is I would agree that intuitively it does not make
10 sense that they are relevant conduct as part of this offense.
11 They occurred in different jurisdictions long before the
12 offense here.

13 The problem that we have and the reason I objected
14 to the criminal history is that the Government in North
15 Carolina took the position before the District Court there
16 that the gun in this case was part of the offense conduct of
17 that case.

18 It was referenced in the PSR, the gun seized in Los
19 Angeles, as part of the offense conduct in North Carolina.
20 There was a section that states whether or not there was any
21 conduct -- part of the offense conduct that's not considered
22 relevant conduct, and the answer was none, and the Government
23 did not object to the PSI in North Carolina in that respect.

24 The District Court in North Carolina made findings
25 of fact, conclusions of law, adopting the PSI in that respect,

1 and the Government at the time of sentencing argued that Mr.
2 Rosemond's sentence should be enhanced as a result -- or he
3 should be given a top-end sentence as a result of the gun that
4 was seized in California at the time of his arrest.

5 So my argument is not so much that intuitively it's
6 part of relevant conduct, but that it violates due process for
7 the Government to take inconsistent positions with respect to
8 the same Defendant in two different litigations.

9 THE COURT: Well, let me ask you a simpler question.
10 Do you think the Government in this case is piling on because
11 of the fact that he served a sentence in North Carolina?

12 MR. SREBNICK: I think the Government's conceded
13 that. They said that -- at the suppression hearing they told
14 Your Honor they were not satisfied with the sentence that he
15 received in North Carolina. They were not satisfied with the
16 sentence he received in New York and there was no question
17 that the Government intentionally delayed this prosecution to
18 find out what Mr. Rosemond would be facing, what he would
19 serve in the other cases.

20 And that's really the legal basis for our downward
21 departure request from the offense level. But this really --
22 the argument I'm making here is really a very specific one
23 with respect to the criminal history category, whether it
24 should be a V or whether it should be a III.

25 The question of whether the Court should depart

1 downward from the offense level based on the deprivation of
2 the ability to serve concurrent time is a separate legal issue
3 that I'd be happy to --

4 THE COURT: No. Let's save the departures, now.
5 Let's talk about just the computation of the criminal history
6 points.

7 MR. SREBNICK: Okay. In terms of the criminal
8 history points my position is that the North Carolina sentence
9 and the New York bail-jumping sentence should be counted as
10 part of the instant offense, should be considered part of the
11 relevant conduct for this offense, and therefore, should not
12 be counted towards Mr. Rosemond's criminal history.

13 My argument is not so much that intuitively they are
14 relevant conduct, but that the Government has already taken
15 the position that they are in the North Carolina litigation
16 and they are estopped from now coming before this Court and
17 taking a contrary position, to Mr. Rosemond's detriment.

18 That's the position I'm raising. And also, with
19 respect to the bail-jump, the argument is that bail-jump is a
20 continuing offense, and the Ninth Circuit has said that in a
21 case called United States v. Gray, which is in my papers. So
22 at the time he was found in possession of a firearm while a
23 fugitive in February of '96, the bail-jump that occurred from
24 New York State was still continuing.

25 So in that respect, intuitively it is part of the

1 relevant conduct of this case.

2 THE COURT: Ms. Standish.

3 MS. STANDISH: Your Honor, Defendant's argument is
4 extremely creative, but what he's asking for is a free pass to
5 say that any conduct from 1991 through when he was arrested in
6 1996 is all the same simply because some of the elements of
7 the crimes overlap.

8 But to go to his specific argument, he concedes
9 intuitively and legally the crimes are unrelated. The
10 possession of a different gun in a different jurisdiction,
11 different venue that couldn't have been prosecuted together,
12 five years apart, are not relevant.

13 He argues that the North Carolina prosecutor who was
14 arguing, as a matter of fact, as was the PSR, that the
15 Defendant should be getting an eighty-seven month sentence
16 where now he was looking at a range of ten to sixteen months,
17 stood up and said, Your Honor, there's a lot of reasons that
18 he ought to at least get a high end sentence, and one of them
19 is that he was found with a gun again.

20 Even if you concede then that because she said that
21 there was a difference in his sentence, that difference in
22 sentence, Your Honor, could be three months at most. We had a
23 ten to sixteen-month range. The middle of that range is
24 thirteen months. Even if the judge intended a high end
25 sentence solely because, and there's no evidence of that,

1 solely because that prosecutor stood up and said, Your Honor,
2 he was found with a gun when he was arrested, it made a three-
3 month difference.

4 Your Honor doesn't need to downward depart to take
5 care of that, even if he thought a three month reduction was
6 appropriate, because as the Government has argued very clearly
7 in its papers, this Defendant -- and as was pointed out,
8 matter of fact, by the probation office independently as a
9 possible grounds for upward departure -- this Defendant's
10 criminal history is so under-represented that he should, at a
11 minimum, get a high end sentence.

12 THE COURT: Now, let me ask you this question, Ms.
13 Standish. He pled guilty to Counts 1 and 2. Count 1 was
14 felony in possession of a firearm and Count 2 was fugitive in
15 possession of a firearm. Now, he was also sentenced in New
16 York and in North Carolina, for the same offenses or offenses
17 that overlapped the present offense?

18 MS. STANDISH: Neither. They're not the same
19 offenses, nor did they overlap, Your Honor. The history of
20 this case is as follows. The Defendant was charged in a 1991-
21 1992 crack cocaine distribution conspiracy that also involved
22 -- the conspiracy involved a shooting, an attempted murder
23 where the victim did not die, in North Carolina.

24 He then prior to being arrested for that case fled
25 to New York. He was arrested in New York, and when arrested

1 in New York was arrested with a gun. That gun later -- he
2 also at that time essentially bragged his way out of jail and
3 became a fugitive from that case.

4 So it was then almost three years later that he was
5 finally caught with a different gun, five years after the
6 initial cocaine conspiracy, three years after the arrest in
7 New York, here in the Central District of California. So he
8 was a fugitive and a felon already when he became a fugitive
9 in possession of a gun and a felon in a possession of a gun in
10 this case.

11 In New York one of -- the only thing the Government
12 really thinks takes this case outside the heartland is the
13 Defendant's good luck and extremely good lawyers. He got the
14 gun suppressed in his New York case so that that gun -- again,
15 separate from this gun in any event -- was not taken into
16 consideration in his sentencing in that case, and he was
17 sentenced to bail-jumping.

18 So the gun in this case, the venue in this case, the
19 sovereign relevant -- relative to New York in this case are
20 all different. There is no conduct here that is relevant to
21 anything that occurred in New York or North Carolina. And I
22 think that the probation officer was much more eloquent than I
23 was in addressing the issue of whether the gun, by being --
24 virtue of being mentioned, and it is casually mentioned in the
25 New York PSR, whether that in any way makes that gun a

1 relevant conduct to the instant offense. And the probation
2 officer says that it is not.

3 So in this case there's simply no way that five
4 years apart with different guns, different sovereigns and
5 different places that this is all a continuing course of
6 conduct. If that was the case, Your Honor, then what the
7 Defendant wouldn't want to hear is the flip side, which is, we
8 should go back to that crack cocaine conspiracy and count the
9 relevant conduct from those initial charges, from the bail-
10 jumping charges, from the relevant conduct of the gun that was
11 suppressed in New York, because it is still relevant conduct
12 to that conviction, whether or not it was suppressed, and we
13 should roll all that into his current sentence.

14 And again, where the Defendant's asking for a
15 departure -- a criminal history departure where --

16 THE COURT: Let's not talk about departures. Let's
17 just talk about whether or not I compute it or the probation
18 department and the Court computes the criminal history
19 correctly.

20 MS. STANDISH: Okay, Your Honor. In that event, if
21 you look at the specific sections, it seems that the
22 Guidelines don't specifically have an example of a case like
23 this where you actually have someone who's escaped in the
24 middle of all these proceedings.

25 But what they do say is that prior sentences where

1 they're defined -- every place that they're defined they are
2 not related if they are separated by an intervening arrest.
3 And so here the definition --

4 THE COURT: Well, let's take a look at the addendum
5 to the pre-sentence report. Relevant conduct is defined in
6 Section 1(b)(1.3), and it says relevant conduct also
7 encompasses all acts and omissions described that were a part
8 of the same course of conduct or common scheme or plan as the
9 offense of conviction. Application Note No. 9 directs that
10 for two or more offenses to constitute part of a common scheme
11 or plan, they must be connected by common victims,
12 accomplices, purposes or similar modus operandi. To
13 constitute the same course of conduct the offenses must be
14 sufficiently connected or related to each other as to warrant
15 the conclusion that they are part of a single episode, spree
16 or ongoing series of offenses.

17 The instant offenses occurred in February of 1996.
18 The offense conduct in the North Carolina conviction,
19 possession of a firearm by a felon, occurred in July of 1991,
20 five years earlier. How is that relevant conduct? How is
21 North Carolina relevant to this case?

22 MR. SREBNICK: Judge, I prefaced my earlier argument
23 by saying that intuitively it is not. The problem we have
24 here is that the North Carolina pre-sentence report said that
25 it was, and the Government didn't object, neither did we in

1 North Carolina -- neither did I. I represented Mr. Rosemond
2 in that case.

3 And the district judge made a finding of fact that
4 it was part of the offense conduct in that case. Based on
5 that, the Government argued to the district judge in North
6 Carolina that Mr. Rosemond's sentence should be aggravated as
7 a result of the gun that was found in his possession in Los
8 Angeles.

9 So what I am arguing to the Court is not so much
10 that it intuitively is relevant under the Guidelines, but that
11 the Government is estopped from taking a contrary position,
12 having taken the -- another position in the North Carolina
13 case.

14 So it's really an argument of collateral estoppel
15 and more of one of due process that the Government is not
16 permitted to take inconsistent positions in a criminal case
17 for the purpose of aggravating a defendant's sentence.

18 THE COURT: I'm having a difficult time logically
19 with the -- with what North Carolina did, the judge in North
20 Carolina, the federal district judge in North Carolina.

21 MR. SREBNICK: Yes, Your Honor.

22 THE COURT: Because from pure logic it doesn't make
23 any sense that this offense is anyway related or relevant
24 conduct to the offense in North Carolina or vice versa.

25 MR. SREBNICK: It doesn't, Judge, and I think

1 principles of due process and collateral estoppel sometimes
2 assume that there are illogical decisions. In collateral
3 estoppel the courts say that you don't question the underlying
4 decision, you just simply apply it, because the Government
5 can't take inconsistent positions in a criminal case,
6 especially.

7 THE COURT: And you think that -- your argument is
8 that I am bound by the judge's -- the District Court judge's
9 ruling in North Carolina, when that judge found and made
10 findings of fact that the fact that the -- that the California
11 gun was relevant conduct to the crime for which he was
12 sentenced in North Carolina?

13 MR. SREBNICK: I think that -- I would say that it
14 doesn't seem to make sense that one district judge is bound by
15 another district judge. And I don't mean to say that he has
16 any kind of authority over Your Honor, but what I am saying is
17 that the Government is certainly bound not to take
18 inconsistent positions, and because that position that was
19 adopted by the District Court in North Carolina has already --
20 whether hypothetically or not -- has potentially inured to Mr.
21 Rosemond's detriment in North Carolina, the Government cannot
22 come before the Court right now and ask for -- to say that
23 they're not relevant conduct.

24 THE COURT: All right. Let me ask Ms. Standish.
25 Ms. Standish, the argument is, from a purely logical

1 point of view you're correct. But now the argument comes up
2 that from what the district judge did in North Carolina based
3 upon the Government's argument in North Carolina, that the
4 Government made it relevant conduct by arguing that and the
5 Court in North Carolina so found.

6 MS. STANDISH: Well, Your Honor, I think that Mr.
7 Srebnick very much overstates what the District Court did.
8 And we have the sentencing transcript. I believe it's
9 admitted -- attached to either his papers or mine. What he is
10 essentially saying is that because it was casually mentioned
11 in the PSR, and then when no one made objections the Court
12 said, Okay, I'm adopting the PSR, that that became a factual
13 finding of relevant conduct.

14 That was actually addressed by the probation
15 officer, that those headings don't mean exactly what you might
16 think they do in her response. But not only that, again, the
17 probation officer points out that all of that information is
18 presented for various reasons, including whether or not --
19 whether the judge should consider an upward departure, and
20 that may have been at issue.

21 But with respect to a due process argument when you
22 have to talk about whether there was a violation, a severe
23 violation of the Defendant's rights if such -- and an
24 injustice that would happen if such inconsistent positions
25 were taken, you've got to look at what the result was in North

1 Carolina.

2 The result at the most, even assuming that in that
3 judge's mind it was the gun in L.A., and only the gun in L.A.,
4 that enhanced his sentence in any way, he went from a midrange
5 of sentence of thirteen months to sixteen months. We're
6 talking a three-month difference.

7 So if Your Honor were to have to decide, which the
8 Government --

9 THE COURT: Yeah, but it's not the three month
10 difference that counsel's arguing about. It's the effect that
11 a prior conviction has in this Court, whether or not it is a
12 prior conviction or whether or not it was taken into
13 consideration and used in that case, because if the Government
14 argued successfully in North Carolina, then they shouldn't be
15 able to argue again for the same result in this particular
16 case.

17 MS. STANDISH: But the argument in this case and
18 that case, they're two different issues. That's why the
19 remedy -- he's arguing a due process violation. He's not
20 saying that technically, as he's admitted, that technically
21 the three points don't count.

22 He's saying that I should be estopped from arguing,
23 even though the probation office found that those three points
24 count, I should be estopped from arguing that time.

25 THE COURT: Yeah. It's not the three months. It's

1 the calculation of the points that he's arguing.

2 MS. STANDISH: I understand that, Your Honor, but
3 that --

4 THE COURT: Let's turn our attention now to the New
5 York. The probation department writes similarly, the offense
6 conduct in the New York conviction, bail-jumping, occurred in
7 1993. The probation officer notes again that the underlying
8 conduct in that offense and the instant offense are separate
9 and distinct criminal acts, one occurring sometime after the
10 other. Admittedly, the Defendant was a fugitive as a result
11 of his bail-jumping, but the possession of a weapon as a
12 fugitive is a separate criminal act. Thus, once again, the
13 acts underlying the New York conviction do not meet the
14 definition of relevant conduct under Section 1(b)(1.3).

15 Now, again, I would have to agree with the probation
16 department that that's the logical result, because he couldn't
17 have been a fugitive in this case unless he was a fugitive out
18 of New York. And so one is not related to the other in this
19 particular matter. It serves as the predicate, I think, for
20 the instant offense that he's a fugitive.

21 MR. SREBNICK: It is an element of the offense, but
22 the basis for my argument there, Judge, is that bail-jumping
23 under Ninth Circuit precedent is viewed as a continuing
24 offense. So at the time that he was arrested in February of
25 '96, his bail-jumping was ongoing.

1 It was all part of a continuing series of acts, and
2 his status as a fugitive was as a result of the continuing act
3 of bail-jumping. So you know, in that sense it is relevant --
4 we think it's relevant conduct.

5 THE COURT: Well, the only difficulty is, I mean, it
6 should have been argued, maybe in New York, that this charge
7 should have been -- with the gun, the fugitive with the gun,
8 should have been transferred to New York or packaged at the
9 same time.

10 MR. SREBNICK: The problem was that New York was a
11 state case. And in fact, I have letters to the prosecutor, I
12 don't recall whether it was to Ms. Standish or whether it was
13 to the prosecutor in New York, asking to try to package this
14 whole deal together.

15 And the Government was resistant to a package deal
16 between two sovereigns, which is why we're here before the
17 Court on the downward departure issue. But in any event,
18 that's our response.

19 THE COURT: All right. Let's --

20 MS. STANDISH: Your Honor, if I may.

21 THE COURT: Go ahead.

22 MS. STANDISH: That argument is easily disposed of,
23 even if he was a fugitive in possession and you call it
24 continuing offense. He is -- we've got two convictions here.
25 One is being a felon in possession and that's not a continuing

1 offense.

2 So regardless of whether or not you don't sentence
3 him on being a fugitive in possession or you don't count those
4 three points for that, he was a felon in possession. There is
5 no argument that he didn't sustain several felony convictions
6 prior to his being found here in 1996.

7 So I misunderstand how the being a fugitive and
8 bail-jumping is not a prior conviction with respect to being a
9 felon in possession later.

10 THE COURT: Yeah, but see, the bottom line is going
11 to be this. Normally, when you have various types of crimes
12 like that, the attorneys at some point try to package the
13 whole thing together, because of the fact that they want to
14 get everything out of the way at one time.

15 Here, counsel's arguing they tried to package it,
16 but because there were two sovereigns, the state in one and
17 the federal government in the other, this is New York and the
18 Central District of California, that they were unable to
19 package it.

20 The argument is that, you know, that now the
21 Government wants its piece of flesh here on the ex-felon in
22 possession of a firearm, and the fugitive in possession of a
23 firearm. It's like asking, you know, tax, tip and service
24 charge, you know, for his conduct.

25 I mean, at what point do you pile it on or at what

1 point do you, you know, you package it together? That's what
2 I think the bottom analysis in this case is all about.

3 MS. STANDISH: I believe the bottom line, Your
4 Honor, though this is -- it is such separate conduct,
5 separated in time and clearly distinct that it's not piling
6 on. And as a matter of fact, as the Government cited in its
7 papers, the Government is free to and should seek justice
8 where justice has not been done in the past.

9 And in this case -- I mean, and that's United States
10 v. Stokes, which is a First Circuit case 1997. There's a
11 quote there, but -- and that case was even more what Mr.
12 Srebnick would probably consider egregious than this, because
13 the Federal Government awaited the state prosecution and when
14 the man was acquitted, brought it to Federal Court and
15 prosecuted him because it felt that it was unjust.

16 And in this case I submit that's exactly what
17 happened here. We have a man who is the definition of a
18 recidivist, who's been a violent felon. Every time he's been
19 encountered by the police he's had a gun in his possession, a
20 gun that on other occasions has been used, and people have
21 been shot.

22 And by some amazing amount of luck and an amazing
23 amount of skill he has managed to spend very little time
24 incarcerated. And in this case the Government thought long
25 and hard about this. This is not an easy case because

1 normally, we don't think of being -- a felon in possession
2 charge on its own as being a violent felony.

3 But in this case this is a very, very dangerous,
4 recidivist individual who has skated in every jurisdiction
5 that he's been in.

6 THE COURT: Yeah. Your argument is that you're not
7 happy with the way he was dealt with in New York and in North
8 Carolina, so now you want to pound him here.

9 MS. STANDISH: My argument, Your Honor, is that
10 there's -- first of all, that there's nothing wrong with that,
11 but that secondly, these cases are so unrelated that they
12 should never have been -- they shouldn't have been packaged
13 together.

14 Even if the New York prosecutor and myself were to
15 sit down together any package deal we would have come up with
16 I assume is something that the Defendant wouldn't have
17 accepted, because it would have taken into consideration that
18 they were two crimes in two sovereigns, and there would not
19 have been a one and a half to three-year bail-jumping charge
20 in New York.

21 THE COURT: I happen to agree with the Government
22 and the probation department in this case. I think they're
23 two separate crimes and it's not relevant conduct, and the
24 criminal history I think is correct.

25 Now, the other argument that's made is the Defendant

1 argues that a departure is warranted based upon delay in
2 prosecution. And even the probation department officer that
3 prepared the report indicated and highlighted this issue as a
4 possible ground for departure in the pre-sentence report,
5 paragraphs 126 through 128. After his release from federal
6 imprisonment the Defendant was convicted in New York of bail-
7 jumping and was sentenced to eighteen to thirty-six months'
8 imprisonment. Two days before his state sentence was
9 completed the Defendant was removed to the Central District of
10 California to make his initial appearance in the instant
11 offense. Here, the Defendant argues that the activity
12 involving the instant offense is relevant or is related or
13 relevant conduct to the North Carolina conviction, and he
14 argues that a downward departure is warranted because of pre-
15 indictment delay, in that the instant offense precluded him
16 from serving concurrent sentences. And that's a pretty good
17 argument.

18 MS. STANDISH: Your Honor, I believe that the
19 Government has laid this out, both in its original opposition
20 to Defendant's motion for a dismissal based on pre-indictment
21 delay, and again, in the papers here, that it's the
22 Defendant's fault that he had so many charges outstanding.

23 THE COURT: Well, but --

24 MS. STANDISH: And what happened --

25 THE COURT: -- but the Defendant's in federal

1 custody, and you know, he can -- what you're arguing is you
2 hold him in federal custody on the charge for which he was
3 sentenced. Upon his release, then you bring him in and you
4 reinstitute or -- not the indictment, but you either serve the
5 indictment on him or you indict him at that time. That's your
6 argument.

7 MS. STANDISH: But again, Your Honor, he faced all
8 his charges as fast as he could. He was indicted in '98 and
9 didn't get here until 1999. And again, Your Honor, usually
10 pre-indictment delay is looked at in terms of due process.
11 What did the Defendant really lose? What is his actual
12 prejudice?

13 In this case, nothing, but -- because he actually
14 did in reverse. He got credit on his state sentence for time
15 in federal custody. We're not even arguing that that -- you
16 know -- there was actually some concurrent time between North
17 Carolina and New York, and then a little bit between New York
18 and here.

19 But in any event, the delay was not a delay that is
20 a long one. It's not considered a long one. And it would
21 only be worth quote unquote "a few weeks" of departure. And
22 those months could actually be taken care of again within the
23 Guidelines range, even two years of delay.

24 There's almost a two year spread just in the
25 Sentencing Guideline range here, and as I've argued in my

1 papers and will continue to argue to Your Honor, this case
2 deserves a high end sentence. If Your Honor believes that he
3 should get a discount of a few months because the Government
4 delayed -- and I say that the Government did not delay and
5 there was no showing of an intent on the part of the
6 Government to do anything wrong and to attempt to prejudice
7 the Defendant, which is a showing that's certainly required to
8 get the case dismissed, and Your Honor found that there wasn't
9 any such delay for that purpose -- that Your Honor could
10 simply say, Well, you know, Government, I'm not going to go
11 with your high end recommendation, and I'm going to discount
12 those months and still be able to stay within the Guideline
13 range.

14 But again, for the reasons that I'm sure we'll argue
15 later when we talk about the Government's position on the
16 criminal history, that a high end sentence within the
17 Guideline range I stated is appropriate.

18 MR. SREBNICK: Your Honor --

19 THE COURT: Well, let me look, here.

20 MR. SREBNICK: I'm sorry.

21 THE COURT: I think that pre-indictment delay
22 causing the lost opportunity to serve concurrent sentences is
23 a valid ground for a departure. In the instant offense the
24 indictment was not filed until 1998, nearly two years after
25 the Defendant's arrest.

1 The Defendant was sentenced in the North Carolina
2 case on February 24th, 1997, and was released from custody on
3 April 11th, 1997. Assuming that the Defendant could have been
4 indicted and convicted shortly after the conclusion of the
5 North Carolina case, it is possible the Defendant could have
6 been -- served at least a few months of a concurrent sentence.

7 And I think this is an unaddressed ground for
8 departure under the decision of Koon v. United States, 116
9 Supreme Court. And the Court does have discretion to depart
10 if the case is sufficiently outside the heartland of similar
11 cases. So I'm prepared to grant him a departure for pre-
12 indictment delay. As to how much of a departure, we're going
13 to talk about that.

14 MR. SREBNICK: Okay. Can I address that now or --

15 THE COURT: Well, what's your recommendation?

16 MR. SREBNICK: I waiting for guidance from the
17 Court. I -- oh, what's my recommendation in terms of a
18 number?

19 THE COURT: Yeah.

20 MR. SREBNICK: I think the Government's grossly
21 understating it. It's thirty-eight months is the amount of
22 time that the delay has cost him. And I can, first of all,
23 correct the Government. Mr. Rosemond has not served any of
24 the time in this case concurrent with his federal sentence,
25 nor has he served any of his federal sentence in North

1 Carolina concurrent with his state sentence.

2 If the Court looks at the numbers, they speak for
3 themselves. He was sentenced. He was arrested February 17th
4 of 1996. When sentence was imposed in North Carolina it was a
5 sixteen month sentence imposed February 24th of `97.

6 Retroactive to February of `96 gives him twelve months.

7 He's released in April of `97, which is fourteen out
8 of the sixteen months. If you count the 85 % -- 15 % credit,
9 that's exactly when he was required to be released. That's
10 April of `97. He received a one and a half to three year
11 state sentence in New York, which required him to serve two
12 years in New York State custody.

13 He was released -- that's when you max out. He was
14 released from New York State custody April of 1999, which is
15 when he came before the Court. In fact, he came here two days
16 before he was released, and if the Court will recall, he had
17 to be sent back to New York in order to be released.

18 He has not served any time in this case concurrent
19 with any other time, nor have his federal and state sentences
20 been -- were imposed to run concurrent. Now, Judge, the
21 Government arrested Mr. Rosemond February 17th of 1996. It
22 took the Government ten minutes to return the Grand Jury
23 indictment in this case.

24 That's how long the Grand Jury minutes are in this
25 case. They had all the evidence they needed in February of

1 '96 to indict Mr. Rosemond. They waited two years and three
2 months, twenty-seven months to indict. He had been indicted
3 at that time Mr. Rosemond could have entered a plea at that
4 time and had his sentence run concurrent with his North
5 Carolina sentence.

6 Instead, the Government waited and Mr. Rosemond had
7 no choice but to play things out in North Carolina. He's then
8 sent to New York and things had to work themselves out there,
9 but the Government's delay has deprived him of the ability to
10 serve the sixteen months in North Carolina concurrent, and the
11 twenty-four months bail-jump in New York, which is forty
12 months, but I'm counting two off for the fact that he got
13 credit in North Carolina for 15 percent.

14 THE COURT: Yeah, but see, that assumes -- your
15 argument assumes two things. One, that a judge would have
16 given him a concurrent sentence.

17 MR. SREBNICK: And I'm prepared to address that,
18 Judge, because under 5(g)(1.3), which is clearly the most
19 difficult area of the Guidelines to understand, but under
20 5(g)(1.3), the only requirement for a consecutive sentence is
21 if the Defendant commits an offense after he is sentenced to a
22 term of imprisonment for the other offense, and therefore, it
23 has to be run consecutive under 5(g)(1.3)(a).

24 In this case, at the time Mr. Rosemond committed the
25 offense here in Los Angeles he had not been sentenced for any

1 of the other offenses. So then the Court has to look to
2 5(g) (1.3) (b) or 5(g) (1.3) (c). The Court has already made a
3 determination that the cases are not related.

4 So you eliminate 5(g) (1.3) (b), which then takes you
5 to 5(g) (1.3) (c) -- and this is all very technical, but it's
6 the Guidelines; that's the way they are -- and under
7 5(g) (1.3) (c) there's a specific mandate from the Sentencing
8 Commission that the way the Court approaches that is to
9 determine what would a hypothetical sentence be, had all cases
10 been consolidated at the same time, and then fashion an
11 appropriate sentence based on all the cases being consolidated
12 in one proceeding.

13 Mr. Rosemond was in possession of a gun here in Los
14 Angeles, in possession of a gun in North Carolina. The
15 grouping rules under 3(d) (1.2), which is what the Court would
16 look to when there are multiple counts of conviction at a
17 consolidated proceeding, if the Court would look to
18 3(d) (1.2) (d) of the Guidelines, the grouping rules require
19 felon in possession counts to be grouped together.

20 2(k) (2.1), which is the Guideline for felon in
21 possession, is a Guideline listed under the grouping rules.
22 If the Court -- I have the 1988 Guideline Manual in front of
23 me, and 3(d) (1.2) (d) is at page 274 and 275 of the Guidelines.
24 At page 275 it clearly indicates that a felon in possession
25 guideline is a guideline that requires grouping.

1 Now, under grouping principles the Court then looks
2 to that particular Guideline and an increase is required only
3 if there are more than three guns. Here, there were two guns
4 involved in the two jurisdictions, so the cases have to run
5 wholly concurrent under the Guidelines.

6 So it's our position that had Mr. Rosemond been
7 arrested and indicted at that time, this case would have had
8 to have been, under the mandate of 5(g)(1.3)(c), which is
9 binding upon the Court, it would have had to have been
10 concurrent with his felon in possession case in North
11 Carolina. There is not --

12 THE COURT: Well, the way I look at it is this. On
13 one hand you're arguing that he should be given credit for the
14 thirty-eight months if he was to package this all up at the
15 time that he was arrested here in the Central District and
16 then sent back to North Carolina, then New York and then
17 returned to the Central District.

18 On the other hand, twenty-seven months was what the
19 North Carolina --

20 MR. SREBNICK: Sixteen months in North Carolina.

21 THE COURT: Sixteen?

22 MR. SREBNICK: Yeah, and twenty-four months in New
23 York. The twenty-seven months is the delay between the date
24 of his arrest and the date the Government filed the charge in
25 this case. In my view, Judge, the Government clearly stated

1 on the record, and there's no -- I don't think they're making
2 any bones about the fact that they purposely delayed in order
3 to see what he would get in the other cases.

4 And the leading case in the Ninth Circuit, Sanchez-
5 Rodriguez, which is the en banc case on downward departures
6 based on delay, was a case in which the Government's action
7 was entirely arbitrary. It was not intentional.

8 THE COURT: What I'm trying to do is this. I'm
9 trying to get a range, best case scenario, worst case
10 scenario, for this pre-indictment delay, had Defendant
11 packaged up. Now, when we look at the calculation here
12 without any adjustments it's an offense level of 19 and a
13 criminal history category of Roman Numeral Number V, and the
14 Sentencing Guideline range is fifty-seven to seventy-one
15 months.

16 So in looking at the range, I'm looking at a range
17 here of, if I take twenty-four months from fifty-seven months,
18 that gives me a range of thirty-three months. Or if I
19 subtract the thirty-eight months from the fifty-seven months,
20 that gives me a range of nineteen months. So for the
21 departure from a Level 19, criminal history V, which is fifty-
22 seven to seventy-one months, a departure would be anywhere
23 from nineteen months to thirty-three months, see, for a
24 concurrent sentence based upon pre-indictment delay.

25 MR. SREBNICK: The departure would be that long or

1 the results would be that? The ultimate range would be
2 anywhere from nineteen --

3 THE COURT: The ultimate range would be nineteen to
4 thirty-three, because in one hand I'm deducting twenty-four
5 months from fifty-seven months and on the other I'm deducting
6 thirty-eight months from fifty-seven months. And that gives
7 me the range, then, if you were to package it all together, of
8 nineteen months on the low side, thirty-three months on the
9 high side.

10 And that's at the low end because the Government's
11 going to be arguing, if I'm going to do any adjusting here, I
12 shouldn't do it at the fifty-seven months, I should do it at
13 the high end or the seventy-one months. So I'm going to hear
14 that from the Government.

15 MR. SREBNICK: Okay.

16 MS. STANDISH: I would --

17 THE COURT: Now, but thirdly -- let's go to the
18 other, now. The third area of the departure -- I shouldn't
19 say departure, because the first was calculation of criminal
20 history points, the second was, the Defendant argues, a
21 departure based on delay in prosecution.

22 And technically, it's the second argument for
23 departure that the defense argues is warranted based on
24 extraordinary post-offense rehabilitation. Now, prior to that
25 letter of February 22nd, that was a negotiable item.

1 I got a report dated February -- I believe it's
2 February 22nd -- from pre-trial services -- yeah, February
3 22nd, indicating apparent bail violation by the Defendant,
4 also recommending that he be remanded on sentencing, because
5 of fraudulent and falsified DMV records and representations
6 regarding transportation to and from work.

7 On one hand he told the probation office in New York
8 that he was being limousined to and from work because his
9 driver's license had been taken. They found out that he had
10 obtained several driver's licenses and was driving
11 automobiles. So they got a little upset.

12 They got more than a little upset. They got upset
13 big time. And then they write a letter to me --

14 MR. SREBNICK: Well, understood.

15 THE COURT: -- because he's on my watch.

16 MR. SREBNICK: It is, Judge, and it is also on the
17 watch of the state parole people in New York and the federal
18 probation people in North Carolina, neither of whom have found
19 it either egregious enough or a violation yet in order to
20 pursue it. In fact, state parole has declined to pursue it.

21 All we know, Judge, at this point, and in fact, all
22 I know is that Mr. Rosemond was issued a New York State
23 driver's license in his own name, his own address, with a date
24 of birth that was two days off. We don't know if it was a
25 clerk's error. We don't know if it was Mr. Rosemond's error.

1 We don't know if it was intentional by Mr. Rosemond.

2 All we know is that it was his own name, his own
3 address, his own physical characteristics with a date of birth
4 that was two days off. So I don't think based on that
5 information there is sufficient either to violate him or to
6 consider that as a disqualifying factor from a downward
7 departure.

8 Now, the issue of whether he told them how he was
9 getting to work, my understanding is that he told the
10 probation office when he first was released that he -- or pre-
11 trial services -- that he was getting to work by limousine.
12 At that point he had applied for a learner's permit to drive,
13 had not obtained a driver's license, so in fact could not
14 drive and that's how he was getting to work.

15 And I don't think that there was any condition of
16 his pre-trial release that prohibited him from driving to
17 work. It simply was a different mode than he had originally
18 told the pre-trial services office.

19 THE COURT: Well, let me read what was sent to me:
20 On February 16th, 2000, pre-trial services in the Central
21 District of California contacted United States Probation
22 Officer Chris Wodzinsky in the Eastern District of New York.
23 Officer Wodzinsky reported that Mr. Rosemond informed him that
24 he was being transported for work purposes by a limousine
25 service and that his employer was paying for this privilege.

1 Due to the fact that Defendant's driving privilege
2 had been suspended on three occasions, Officer Wodzinsky went
3 to the Defendant's home in order to confirm his means of
4 transportation. The Defendant was observed driving an
5 automobile, and when confronted attempted to provide a license
6 to the officer.

7 The officer proceeded to the Department of Motor
8 Vehicles and was informed that the Defendant's driving
9 privilege was presently suspended. On December 13th, 1999,
10 the officer conducted a home visit and again observed the
11 Defendant entering a 1998 Lincoln Navigator, which is owned by
12 a friend who resides in New Jersey. When confronted, the
13 Defendant presented his license, which had been issued as
14 recently as November 22nd, 1999. This license was then
15 confiscated.

16 Officer Wodzinsky discovered through a DMV records
17 check -- that's DMV in New York -- that there were two
18 licenses issued for this individual with different dates of
19 birth. The Defendant actual driver's license issued under the
20 date of birth February 5th, 1965, has the Defendant's present
21 home address, which was later changed to the Federal
22 Correctional Center in Malone, New York. This license had
23 been revoked on three occasions for failure to answer
24 summonses.

25 The second driver's license on record with a date of

1 birth of February 7th, 1965, was applied for after the
2 Defendant's release from custody on June 28th, 1999. The
3 Defendant received a learner's permit on August 16th, 1999,
4 and a full driver's license on November 2nd, 1999.

5 Due to the fact that Officer Wodzinsky was
6 supervising the Defendant on a courtesy basis for the Eastern
7 District of North Carolina, a letter was sent to that district
8 on December 16th, 1999. Lastly, Mr. Wodzinsky indicated that
9 it is likely that the Defendant used false identification in
10 order to obtain this driver's license.

11 On February 8th, 2000, pre-trial services contacted
12 United States Probation Officer Jeff Stenell in the Eastern
13 District of New York. Officer Stenell indicated that the
14 Defendant has been compliant under electronic monitoring and
15 that's he's been employed by Blackground Entertainment as a
16 coordinator for artist development. The Defendant's curfew
17 hours during the period of July 1999 through January 31st,
18 2000, have been from 7:15 a.m. to 6:30 p.m. Nevertheless, at
19 the request of Defendant's employer on February 1st, 2000,
20 Defendant was permitted to work from 7:00 a.m. until 10:00
21 p.m. on Tuesdays and Thursdays and this was done in
22 conjunction with a parole curfew, which is 7:00 p.m.
23 And it goes on. On September 24th, 1999, Officer Jeff Stenell
24 of New York indicated that he attempted to contact the
25 Defendant regarding his curfew while in Los Angeles for court.

1 On September 23rd, 1999, telephone contact was attempted at
2 10:24 p.m., 10:46 p.m., with no answer. At 11:07 p.m. a
3 telephone message was left and at 12:28 a.m. the Defendant
4 telephoned the officer and indicated that the individuals at
5 the residence were on the Internet and the calls could not go
6 through.

7 Officer Stenell was wary of this excuse, as the
8 telephone actually rang and the answering machine did not
9 engage. Nevertheless, due to his previous compliance, no
10 violation was initiated. At the present time -- it goes on --
11 pre-trial services is requesting that the Court not take any
12 actions with regards to these allegations. Nevertheless, pre-
13 trial services is recommending that the Defendant be remanded
14 at his appearance for sentencing.

15 Moreover, pre-trial services requested that pre-
16 trial services in the District of New York rescind the
17 permission granted to Defendant for additional work hours on
18 Tuesdays and Thursdays. It is of great concern that the
19 Defendant may have used additional false identification in
20 order to obtain a falsified permit and subsequent driver's
21 license.

22 The Defendant was less than candid with pre-trial
23 services in the Eastern District of New York, in that he
24 falsely reported that a limousine service was transporting him
25 to work, and when his falsified driver's license was

1 confiscated, then and only then he cleared his actual driver's
2 suspension.

3 MR. SREBNICK: Your Honor, if I may address, first,
4 the limousine. Mr. Hankerson, who is Mr. Rosemond's employer,
5 is present in court. Mr. Rosemond was being provided a
6 limousine to go to work. He did ride in a limousine. It's
7 not false information.

8 The question is, did he have an obligation once he
9 obtained a driver's license in his own name and his own
10 address to then notify probation office or the pre-trial
11 service that he was using a different mode of transportation
12 to go to work, when in fact he would be home at every night at
13 the hour that he was required to be, and there was no evidence
14 and no suggestion that is has in any other way violated his
15 curfew or his requirement to be at work.

16 And I think the answer -- I mean -- perhaps I can
17 take a step back with Your Honor. This is a Defendant,
18 obviously, who's been in the system before and there is no
19 question, based on my own experience in speaking with Officers
20 Wodzinski and Mr. Steimel and Mr. Rieger out here that it's --
21 I get the sense that they're almost looking for something.

22 When Mr. Rosemond was in California it was -- when
23 -- September 23rd? He was out here for the suppression
24 hearing. That's when they called him at the residence, and
25 maybe somebody else from the -- from that residence that he

1 was staying at or staying with was on the Internet.

2 The point is that I get the sense that these people
3 are looking for any way to violate him, and I spoken with
4 Officer Wodzinsky and I've spoken --

5 THE COURT: That's obvious. I mean, it doesn't take
6 an idiot to figure that out.

7 MR. SREBNICK: I understand that, and I figured it
8 out. So obviously -- but Judge, the point I think we have
9 here is that we have an individual who had been incarcerated
10 for a long time. He didn't have a driver's license when he
11 got out. His driver's license has expired in '92, which is
12 clear from the Government's own submissions.

13 He went out and got a driver's license to get to
14 work. He has gone to work every day. He has been at home
15 every night as required. He has complied with all the Court's
16 conditions. He's been out here as he's been -- when he's been
17 required to report.

18 He has gone to probation. He has gone to state
19 parole. He has gone to pre-trial services. And if we are
20 left with eight months later that this is what they are coming
21 forward with, I think, Judge, in all -- when the Court
22 considers everything, that should not be a disqualifying
23 factor from a post-offense, rehabilitation, downward
24 departure.

25 THE COURT: Well, but here's what it does. You're

1 arguing on one hand that, you know, he has been rehabilitated
2 and that a downward departure is warranted based on
3 extraordinary post-offense rehabilitation. That's your
4 argument, and you have filed your brief in advance of all of
5 this.

6 So what's happening is the probation department,
7 either at the request of the Government or on its own, is
8 indicating to me -- basically undermining your argument.
9 That's the problem that I have here.

10 MR. SREBNICK: And Judge --

11 THE COURT: And you know, it doesn't make me happy
12 when he's on supervised release that, you know, he's not being
13 truthful.

14 MR. SREBNICK: Judge, I don't know what evidence
15 there is in the record, what competent evidence for purposes
16 of a sentencing hearing there is that he has not been
17 truthful. We have a --

18 THE COURT: All right. Let's talk about what
19 information he gave in North Carolina. This was about I think
20 the riot or the difficulty in the institution.

21 MR. SREBNICK: May I approach? Can we approach on
22 that, Judge?

23 THE COURT: Do you really have to?

24 MR. SREBNICK: Yes.

25 MS. STANDISH: No objection.

1 THE COURT: All right. Let's go off -- sidebar.

2 (Sidebar discussion)

3 MR. SREBNICK: Thank you for the Court's indulgence
4 in allowing me to approach on this matter, just simply because
5 I don't know who's out there and I don't want any aspect of
6 the fact that he has tried to cooperate to make -- to be made
7 public. I don't know everybody who's in the audience. So I
8 just wanted to, in an abundance of caution, approach.

9 Judge, at the sentencing hearing in North Carolina a
10 jail official from the Vance County Jail testified at that
11 hearing that Mr. Rosemond while he was in jail had learned of
12 an escape attempt by -- learned that four inmates were
13 planning to escape from the jail.

14 He contacted his girlfriend, fiancé who is in court
15 today, and had her call the jail administrator at the Vance
16 County Jail and report the attempt or the plan. They
17 immediately whisked Mr. Rosemond into another room and found
18 that there were in fact plans to escape by four inmates.

19 They had begun to either dig out of the cell or
20 something to that effect, and had made changes to the -- there
21 were some changes made to the fence that apparently inmates
22 had access to. And one of the inmates confessed to having
23 planned the escape.

24 And it's our position that that, which occurred in
25 1996, is one --

1 THE COURT: Did he get any credit for that at all?

2 MR. SREBNICK: Not at all. He received a high end
3 sentence in North Carolina.

4 MS. STANDISH: Obviously because the judge
5 considered it and didn't consider it worthy of departure
6 consideration. Mr. Srebnick wants his cake and eat it, too.

7 THE COURT: Let me ask this, now. Was he already
8 sentenced and he discovered the escape, or was he awaiting
9 sentence and he discovered the escape?

10 MR. SREBNICK: He was awaiting sentence. But I
11 think what happened, Judge, quite frankly, is that his
12 Sentencing Guidelines were at ten to sixteen months and the
13 judge didn't want to depart on that basis. That's just the
14 first in a series of acts that he has undertaken in an attempt
15 to demonstrate his rehabilitation.

16 Since then, he has been debriefed by the Eastern
17 District of New York prosecutors, was entirely truthful with
18 them according to what they told me, and he also was debriefed
19 in the State of New York regarding who he paid at Ryker's
20 Island to change his bail papers in order to get out.

21 And he made consensual calls to that individual and
22 the individual apparently caught on to what was going on, so
23 nothing was made of it. I don't say that is an independent
24 basis for departure, Judge. It's simply one factor that I'm
25 asking the Court to consider in the overall package of this

1 individual's attempt from a very difficult and bad criminal
2 history and background -- there's no question about it -- to
3 try to right himself.

4 THE COURT: Let me ask you this question, now. What
5 are you arguing bottom line he should receive in this case?

6 MR. SREBNICK: Well, I'm asking for a -- I was
7 asking for a thirty-eight month downward departure from the
8 fifty-seven months. And when I made the arguments regarding
9 post-offense rehabilitation it was really so that this Court
10 in exercising its legal discretion on the post-indictment
11 delay could feel comfortable that this is a person who is
12 truly trying to change his life around.

13 I would be very, very obviously comfortable, and Mr.
14 Rosemond would be thankful, with a thirty-eight month
15 departure from a low end fifty-seven month sentence to a
16 sentence of --

17 THE COURT: I think I said it was going to either be
18 thirty-eight or --

19 MR. SREBNICK: Nineteen or thirty-three, I think.

20 MS. STANDISH: Low end of the Guideline range.

21 THE COURT: Now, you're going -- you're arguing for
22 high end.

23 MS. STANDISH: Of course, Your Honor. And the
24 reason is, first of all, just to talk about this departure
25 issue or this grounds for departure, first of all, it is the

1 Defendant's burden to show that he's had extraordinary post-
2 defense rehabilitation.

3 Even attempting -- uncovering an escape attempt is
4 an attempt to get a lower sentence, hopefully, not -- because
5 if you're afraid that your roommate's going to get caught,
6 you're going to get slammed with that sentence, as well.

7 THE COURT: Here's the -- I really can't give him
8 any departure for what help he's given to prior jurisdictions
9 because of the fact all of that was, you know, before those
10 prior jurisdictions at the time they sentenced him.

11 MR. SREBNICK: The New York cooperation was not; the
12 New York cooperation was not. But Judge, again, I would
13 certainly withdraw that as a separate ground in light of the
14 Court's stated inclination to consider a departure on the
15 first ground, and it's --

16 THE COURT: Well, I truly believe that there should
17 be a departure based on post-indictment delay. I think that
18 what the Government did here, waiting till it completed the
19 North Carolina and then New York, and then --

20 MS. STANDISH: Didn't wait till it completed in New
21 York, Your Honor. We didn't.

22 THE COURT: Well --

23 MS. STANDISH: He was indicted seven or eight months
24 before that --

25 THE COURT: After he got out of the federal custody,

1 then someone, you know, looked into this thing about indicting
2 him and, you know, they should have indicted him while they
3 had him in federal custody. They arrested him here, for God
4 sakes. They sent him back to North Carolina.

5 MS. STANDISH: I understand, Your Honor.

6 THE COURT: And they should have been --

7 MS. STANDISH: That Your Honor is going for a
8 departure there. And I would just argue, though, that even
9 considering, even just in terms of range of the departure, any
10 of this post-offense rehabilitation, there is no evidence of
11 post-offense rehabilitation and in fact --

12 THE COURT: Save your time. I'm not going to depart
13 on that ground.

14 MS. STANDISH: I know, but even in terms of
15 considering it, what Mr. Srebnick is saying is in terms of how
16 much of a departure. The Defendant had to lie to get that
17 driver's license. He knew -- all the evidence is that he knew
18 his license was suspended, and it turns out it only cost him
19 thirty-five bucks to clear it up when he went to bother to do
20 it.

21 But he didn't think he was going to be able to, and
22 the pre-trial services officer indicated -- I mean, I've
23 spoken to him. When he spoke to Mr. Rosemond it wasn't just,
24 Oh, by the way, how you getting to work now. It's, your
25 license is suspended, how are you getting to work.

1 And what we -- it's the Defendant's burden here, and
2 we don't have the Defendant getting up here and telling you
3 what really happened.

4 THE COURT: Wait. Let me tell you something. If
5 it's such an egregious situation, bring it to the attention of
6 North Carolina, but don't bring it to me, because all I have
7 him right now for is supervised release violation. That's all
8 it -- that I can take that into consideration, not for
9 purposes of sentencing the guy.

10 MS. STANDISH: Your Honor, for purposes of
11 determining whether or not he's met his burden of showing --
12 he's arguing that his compliance with his pre-trial services
13 is a reason for you to consider mitigating his sentence,
14 whether within the range or --

15 MR. SREBNICK: No. No.

16 MS. STANDISH: -- for downward departure.

17 THE COURT: Wait. Wait a minute.

18 MS. STANDISH: But then he should withdraw it with
19 respect to arguing a point within the range. He's trying to
20 say that this --

21 THE COURT: No, I think he can argue that. Look,
22 I'm not inclined to grant him a departure based upon
23 extraordinary rehabilitation, because a lot of this
24 information was available to judges at the time that they were
25 going to impose sentence, and they didn't consider it.

1 You know, this is sort of after the fact, getting a
2 second chance to argue it. I don't think that's appropriate.
3 The thing that bothers me about the case is the pre-indictment
4 delay. I think there's good legal grounds for that one. Now,
5 that's number one that I'm going to grant a departure on.

6 The second argument or the second area that we have
7 to talk about -- and you really should do it out, you know, in
8 open court -- is whether or not he should get the high end or
9 the low end of the Sentencing Guideline for me to apply the
10 departure.

11 I don't know why he should get the high end on this
12 case. I mean, this is just a run of the mill type case to me.

13 MS. STANDISH: He's not a run of the mill Defendant,
14 Your Honor, and as the Government --

15 THE COURT: That's what criminal history put him in
16 a criminal history V.

17 MS. STANDISH: And the PSR specifically noted -- as
18 it noted that a pre-indictment delay might be a grounds for
19 downward departure, it specifically noted independently that
20 an upward departure might be appropriate based on criminal
21 history.

22 He has many -- he's got two violent old convictions
23 that weren't counted. He has a gun that was suppressed so
24 that he didn't get convicted, and the Guidelines specifically
25 say that that can be a ground for upward departing. And I'm

1 not asking for an upward departure. I'm asking for high end.

2 THE COURT: Let's go outside and we'll argue it.

3 (End of sidebar discussion.)

4 (Off the Record Discussion)

5 THE COURT: All right. Let's go back on the record
6 with regard to Rosemond. All right. I indicated that I'm
7 inclined to grant a departure based on pre-indictment delay
8 causing a lost opportunity to serve concurrent sentences. I'm
9 not inclined to grant a departure based on extraordinary post-
10 offense rehabilitation. Now, looking at the Guidelines --

11 MS. STANDISH: Your Honor, there was one additional
12 argument that they put forth that the Court has not yet
13 discussed, and that would be I believe that the Defendant
14 argued that his conditions of pre-trial release were so
15 stringent that they should count for custody time.

16 MR. SREBNICK: We withdraw that argument, Judge, in
17 light of our discussion at sidebar.

18 THE COURT: Now, offense level of 19 and a criminal
19 history category of Roman Numeral Number V, the range is
20 fifty-seven to seventy-one months without any departure for
21 pre-indictment delay. Now, let's talk about the Sentencing
22 Guideline range first, the fifty-seven to seventy-one months.

23 The Government's going to be arguing for the high
24 end. Is that correct, Ms. Standish?

25 MS. STANDISH: That's correct, Your Honor, the high

1 end of the higher range, as a matter of fact.

2 THE COURT: Why is that?

3 MS. STANDISH: Your Honor, again, this is a
4 recidivist Defendant who every time he has been encountered by
5 the -- by law enforcement, which has been over and over and
6 over again, he's had a gun. He's used that gun, and he has
7 not been punished for that in the past.

8 His criminal history is severely under-represented.
9 Now, the Government is not asking --

10 THE COURT: Wait. Let's stop. He's in a criminal
11 history category of Roman Numeral Number V. That's out there
12 quite a bit. So when you argue for either the high end or an
13 upward adjustment, he's already paid for it based on the
14 classification he's in, and he's in the category number V.

15 MS. STANDISH: That's not the Government's argument,
16 Your Honor. The Government's argument is that generally what
17 the Government would be doing and what the guidelines
18 specifically sanction is a departure from category V upward
19 from there to VI.

20 Or the way the case law looks at it, if you can't go
21 higher than VI, sometimes you got a guy who starts at VI, then
22 you go up -- when you depart in offense level, an equivalent
23 in the range of months. You look to the guidelines and you
24 look and say, he should have gotten the equivalent of three
25 more points, which would have put him on another -- you know

1 -- another offense level equivalent up.

2 And what the Government is saying is this man has
3 several convictions that were not counted by the Guidelines.
4 It's even noted by the probation officer that his criminal
5 history, parts of which weren't counted, is so bad that the
6 Court may consider an upward departure.

7 The Government's not asking for an upward departure,
8 instead saying that it's the higher range -- that it should
9 counter, as a matter of fact, your downward departure in at
10 least giving him a higher range and the high end of that
11 range.

12 And as I argued in my papers, there are actually
13 several instances that should count, that should have actually
14 increased his criminal history. And if I could go through
15 them just briefly, there are two convictions that are too old
16 to count, technically.

17 So technically, no points are assigned and he's only
18 a category V, despite the fact that's a relatively high
19 category. But Section 4(a)(1.3) of the Guidelines
20 acknowledges that if you have information, reliable
21 information about serious similar conduct that's too old, that
22 you might consider that in your upward departure.

23 In this case, the two prior gun convictions, one of
24 which another court found the Defendant actually shot someone,
25 not just the PSR says he shot someone, but a court found that

1 that allegation of him shooting someone in the leg was true,
2 and --

3 THE COURT: But I ask you, why didn't the court
4 there punish him?

5 MS. STANDISH: The Court there did, Your Honor. But
6 what I'm saying is that in criminal history category that
7 conviction, which normally if it was within a fifteen-year
8 range would have counted, didn't. And the Guidelines
9 specifically say -- despite the fact that he was sentenced to
10 that.

11 I mean, you count in criminal history category,
12 everything was already sentenced. They're already punished
13 for that. It's whether or not it should factor into the
14 amount of punishment in this case. And those two convictions
15 of serious, similar conduct, specifically, the Guidelines note
16 and the case law notes, those are the kinds of things you
17 consider.

18 They also consider serious, similar unchanged
19 conduct. In this case we have identical charged conduct where
20 the Defendant managed to get the gun suppressed. So he didn't
21 get punished for that because of the suppression issue. But
22 that doesn't mean -- the case law specifically says, Yeah, we
23 know he wasn't punished for that.

24 In some instances he wasn't even charged for that.
25 But Your Honor can and should take that into consideration in

1 determining whether or not he should be upward departed on his
2 criminal history. Or in this case, conservatively, the
3 Government is just saying consider the higher end of the
4 range.

5 So he got lucky in that case and that gun that he
6 had in his hand and threw into a dumpster was suppressed. He
7 receive no punishment for that and no criminal history points
8 for that. Whereas, he normally would have gotten a double
9 whammy, here he gets no whammy, if the judge doesn't consider
10 at least going with the high end of the Guideline range.

11 So there's three separate convictions that the way
12 the case law would look at it if you were inclined to upward
13 depart what you would do -- and again, the Government is not
14 asking for an upward departure -- if you were inclined to
15 upward depart you would count those points as if they had been
16 applied and then say that would be the equivalent to the
17 criminal history category VI, or the equivalent in this case
18 of a criminal history category VI and you'd probably have to
19 bump it an offense level to get all nine points in there.

20 And in that case then that would be the new range
21 that the Court would sentence within. Well, that's an awful
22 lot of years in this case. And what the Government is simply
23 asking is that you use it to offset what the Court has
24 expressed is a belief that he ought to get a downward
25 departure based on pre-indictment delay.

1 And if you do grant that departure, at least make it
2 a minimal departure. Take the smaller-- you've already set a
3 range -- if it was --

4 THE COURT: Either twenty-four months --

5 MS. STANDISH: -- twenty-four months instead of
6 thirty-eight.

7 THE COURT: -- to thirty-eight months.

8 MS. STANDISH: So if it was a twenty-four month
9 difference the low end would be thirty-three. And let's see,
10 what's seventy-one minus twenty-four? I've got two
11 engineering degrees and I can't tell you that without a
12 calculator.

13 MR. SREBNICK: Forty-seven.

14 MS. STANDISH: Pardon me?

15 MR. SREBNICK: Forty-seven.

16 MS. STANDISH: Would be forty-seven, so that the
17 higher range would be thirty-three to forty-seven, and then
18 the Government would say that he should get forty-seven. That
19 is still below, it's still below the low end of his original
20 Guideline range.

21 It is a departure, and the Government thinks a
22 significant one in the case of a Defendant that is this
23 violent and who the Government believes is still showing
24 recidivist behavior because he gets away with whatever he can,
25 in this case, you know, getting a new driver's license, you

1 know, when he knew that his license was suspended.

2 And again, I just have to keep saying that the
3 burden is on the Defendant to show that he's entitled to these
4 kinds of things. And this Defendant hasn't told you anything.
5 He has simply thrown a lot of things in the air and said,
6 Well, the Government hasn't proved I've violated.

7 Well, I don't have to prove he violated. He has to
8 prove he's entitled to a departure.

9 THE COURT: Well, let's stop it. I bought onto
10 everything that you argued, other than pre-indictment delay.

11 MS. STANDISH: I'll stop arguing that one, then,
12 Your Honor.

13 THE COURT: See, that's the one that I'm concerned
14 about. In that pre-indictment delay I've set a range for an
15 adjustment of either twenty-four months or thirty-eight
16 months. And I got these numbers because of the fact that
17 these are the sentences that he served, both in New York and
18 in North Carolina. So I'm trying to be logical here in
19 setting that range.

20 MS. STANDISH: In that case, Your Honor, I would
21 simply say that the twenty-four month range -- and it was only
22 -- I mean -- only twenty-four months -- it was actually even a
23 bit less than that, I believe, that the Government allegedly
24 delayed in indicting would give you a range, according to Your
25 Honor's calculation, of thirty-three to forty-seven months,

1 and the Government would request the high end of that range or
2 a forty-seven month sentence, and remand today of the
3 Defendant.

4 THE COURT: All right. Let me hear from Defense
5 counsel.

6 MR. SREBNICK: Your Honor, the issue of whether the
7 Court should choose the twenty-four or thirty-eight months
8 really is independent of whether or not Mr. Rosemond is a bad
9 guy. It's a question of how long the delay cost him. And we
10 submit to the Court that it's thirty-eight months, and
11 therefore, the Court should look initially at the range being
12 nineteen to thirty-three months and the question being, where
13 within that range should the Court sentence him.

14 And we would submit to the Court that the Court
15 should choose the low end of the Guidelines. Many of the
16 reasons that we submitted in support of our request for
17 downward departure based on post-offense rehabilitation apply
18 also to Mr. Rosemond's -- to the Court's decision whether to
19 mitigate his sentence and sentence him at the low end of the
20 Guideline range.

21 Really, the focus of our argument there and the
22 focus of our argument in support of mitigation of sentence
23 involves Mr. Rosemond's conduct and his new-found vision and
24 life since his release from prison. Judge, he's got a five-
25 year-old son who is here in court, Jamo. He's sleeping right

1 now.

2 And he's got a fiancé, Cynthia, who is here with
3 him. He really is looking toward the future. He has an
4 employer who is here, Barry Hankerson. Mr. Hankerson, please
5 stand up. Judge, Mr. Hankerson has -- owns a company called
6 Blackground Entertainment that promotes people in the music
7 industry, and he's been in the business for many, many years.

8 He was the former vice-mayor -- deputy mayor of the
9 City of Detroit, and he was married to Gladys Knight, who is
10 also in court today. And the Government, and really, perhaps
11 the most egregious --

12 THE COURT: We're missing the Pips. Are they here?

13 MR. SREBNICK: They couldn't make it, Judge.

14 In any event, the Government in perhaps the most
15 egregious example of careless advocacy, filed with the Court a
16 pleading under seal listing -- what they filed was a printout
17 of the criminal record of Barry Hankerson and of another
18 character witness for Mr. Rosemond, Fred Brathwaite.

19 The Government didn't do its homework. They filed
20 the criminal history printout of a different Barry Hankerson,
21 and what they filed under seal was libelous if it weren't for
22 the fact that the Government has absolute immunity, and the
23 prosecutor does in this case.

24 They claim that the Barry Hankerson has nine
25 criminal convictions. This man doesn't have a single criminal

1 conviction, was arrested once in the 1960s with Jessie Jackson
2 for civil disobedience. He is Mr. Rosemond's mentor and his
3 employer, and I would ask that Mr. Hankerson be permitted to
4 address the Court so that he can tell the Court exactly the
5 way Mr. Rosemond has been since his release from incarceration
6 in June of 1999, the types of conversations he's had with him,
7 the change in the young man that he sees.

8 I think that would add a lot of credibility to what
9 I'm saying to the Court today, and I would ask the Court's
10 indulgence. I don't know if the Court wants him to take the
11 witness stand --

12 THE COURT: No. From the lectern is permissible.

13 MS. STANDISH: Pardon me. Your Honor, I had thought
14 we had gotten beyond the argument that -- the post-offense
15 rehabilitation argument, and that that was going to be under
16 consideration.

17 THE COURT: This is not going to that. This is
18 strictly going to where in the Guideline range, whether it be
19 fifty-seven months to seventy-one months before I apply any
20 credit for pre-indictment delay or downward departure for pre-
21 indictment delay.

22 MR. SREBNICK: If I may just guide Mr. Hankerson --

23 THE COURT: Let me ask the Government, is it
24 accurate that you filed a document with regard to this witness
25 that's going to testify and it's the wrong rap sheet of a guy

1 that was the vice-mayor of Detroit?

2 MS. STANDISH: Your Honor, I have no information
3 that that's true. As a matter of fact, we did the best that
4 we could with the information given to us by the defense.
5 They don't provide social security numbers. You use the name
6 you have and you hope that the name is as distinctive as Mr.
7 Hankerson's is, and you find it in the right jurisdiction.

8 Now, Mr. Srebnick could have called me and said,
9 That's not right, here's his social security number. Instead,
10 of course, he waited to come here and call me a liar, which
11 he's done in the past. And --

12 THE COURT: No. He's calling you someone -- a
13 defamer --

14 MS. STANDISH: Libelous, yes.

15 THE COURT: Right.

16 MS. STANDISH: And the Government did the best that
17 it could. Agent Black is here in the courtroom. He conferred
18 extensively with New York authorities. It was New York
19 authorities that ran the rap sheets of the people that were
20 submitted.

21 Ad Your Honor, if indeed it is not Mr. Hankerson it
22 would have been courteous of Mr. Srebnick to call and say,
23 It's not and I can prove it. I would have withdrawn it if
24 that's the case. Instead, I'm left here to say I don't know,
25 perhaps this is Mr. -- the same Mr. Hankerson. I don't know

1 that.

2 MR. SREBNICK: Judge, I received the Government's
3 submission on Tuesday. I wanted to make sure I could see Mr.
4 Hankerson in person, and Mr. Brathwaite, before I filed
5 something with the Court or before I talked to Ms. Standish
6 and made a representation that it was a different person.

7 I don't know. I had never met him before. So I
8 wanted to make sure, and the first time I had an opportunity
9 to meet him was this weekend when I flew in from Miami. So I
10 can't do the Government's homework for it. It has an
11 obligation to get its facts straight.

12 The Mr. Hankerson that the Government says has an
13 extensive criminal history is five foot seven. This man is
14 six feet tall; five years' difference in birth date, about
15 thirty pounds in weight. They had the social security numbers
16 wrong. They had Mr. Hankerson jumping the tolls in the New
17 York subways, failing to pay tolls, nine misdemeanor
18 convictions.

19 This man has been riding limousines for thirty
20 years, hasn't been in a subway in New York in thirty years.
21 They could have called me to ask me. I didn't know they were
22 going to run a criminal history check on every single witness,
23 and who they were going to run.

24 She indicated to me she was going to file some, but
25 I assumed they would get -- that she was going to run some,

1 but I assumed they were going to get the right people, not
2 somebody wrong. Fred Brathwaite is also here. Mr.
3 Brathwaite, why don't you stand up.

4 This man was on MTV for eight years every week on a
5 show called "Yo, MTV Raps," once a week. I submitted to the
6 Court an article on the New York -- from the New Yorker
7 magazine in which it said that Mr. Brathwaite was 32 years old
8 in 1991.

9 They pulled a criminal history of an individual
10 named Fred Brathwaite who's thirty years old today, who is
11 five foot seven. Mr. Brathwaite's six foot three, 230 pounds,
12 is born in Brooklyn. The individual they pulled a record on
13 is from Barbados. I can't do the Government's homework for
14 it.

15 So Judge, the point is that -- and the point I'm
16 trying to make -- is that they quickly jumped to conclusions
17 about Mr. Rosemond. They did it at the bond hearing 11 months
18 ago when the Court was concerned about their representations
19 as to Mr. Rosemond's criminal history, and I'm just concerned
20 that they're all too willing to jump to conclusions that he is
21 not rehabilitated or not trying his best to change.

22 I mean, this is a guy who's been down in the depths,
23 Judge. This is not Leona Helmsley or Michael Milton standing
24 before the Court arguing post-offense rehabilitation. If
25 there's somebody who has the ability -- or not -- I shouldn't

1 say the ability, but if there's somebody who should get credit
2 for mitigation of sentence for his efforts, it's somebody who
3 grew up in a tough neighborhood, who really had to overcome an
4 abusive father and no money growing up.

5 And yes, he has been involved in crime and we don't
6 run away from that. He has a terrible criminal history, and
7 it doesn't make it easier for me to stand before the Court and
8 argue that he should get a low end sentence. But all I'm
9 asking is the Court hear out what he is doing today from Mr.
10 Hankerson, who is his employer and mentor, and give us some
11 consideration, give Mr. Rosemond that consideration to allow
12 him to get his life back with his fiancé and his son.

13 MS. STANDISH: I'd like to --

14 THE COURT: Mr. --

15 MS. STANDISH: -- correct --

16 THE COURT: -- let Mr. Hankerson speak.

17 MS. STANDISH: May I just correct one accusation
18 that was made, Your Honor? I spoke to Mr. Srebnick over a
19 month ago about running criminal histories and was given no
20 additional information. I told him I'd like to be able to run
21 these criminal histories in the best fashion possible.

22 MR. SREBNICK: Absolutely.

23 MS. STANDISH: And he gave me no information. He
24 got -- I had --

25 THE COURT: Did you ask him?

1 MS. STANDISH: I had the -- yes, Your Honor, and I
2 had the names because I had them in front of me. He'd already
3 filed the letters. I said, I'm going to file -- I'm going to
4 run the criminal histories on all the individuals that filed
5 letters, to the extent that I can. And some of them --

6 THE COURT: Yeah, but did you --

7 MS. STANDISH: -- I even told him --

8 THE COURT: Wait. Wait. Did you ask him, Could you
9 please give me the date of birth and social security numbers
10 for these individuals?

11 MS. STANDISH: I asked for information that would be
12 of assistance. I didn't say social security number, because I
13 told him that names like Cynthia Reed we couldn't even run
14 because it's way too common a name. So a lot of these people
15 we couldn't even try to run criminal history for because
16 you're going to get a million hits and you know that you're
17 not going to get the individual --

18 THE COURT: But aren't you embarrassed to -- you
19 know -- the two individuals that are here, you know, and you
20 made some serious accusations about their integrity and they
21 come into court just completely different?

22 MS. STANDISH: What I'm embarrassed about is that
23 Mr. Srebnick, with a month's notice, didn't give me a day's
24 notice, didn't call Friday, didn't leave a message this
25 morning, because I could have then rectified a mistake, if a

1 mistake was made, instead of standing here and saying, Okay,
2 now I have to go up and see how tall Mr. Hankerson is and that
3 he doesn't match, because five years' date of birth off is not
4 that far, you know, based on what they said at the time --

5 THE COURT: You're still not willing to concede?

6 MS. STANDISH: No, Your Honor, I'm not. I am not
7 willing to concede that. I mean, I'll concede -- no, I'll
8 concede now that this is not the Mr. Hankerson, based on the
9 description in the report and now that he's in the courtroom,
10 and that he's not the man with the misdemeanor convictions.

11 That, I'll concede, but I won't concede that the
12 Government has done anything wrong in attempting to rebut this
13 recidivist, this violent recidivist's papers. And you know,
14 we did the best we could with the information we had after I
15 had a discussion with Mr. Srebnick a month ago.

16 And the personal attack on me is what, right now,
17 I'm concerned with.

18 THE COURT: Well, I don't know if it's a personal
19 attack. It's just, you know, you're supposed to, you know,
20 check these things out before you run down and file something.
21 I mean, you know, you have the resources that nobody else has.
22 You have an army behind you. Nobody else has an army.

23 MS. STANDISH: Apparently, we've got an army and
24 Gladys Knight and the Pips on the other side of this case.

25 THE COURT: Well, now you're getting personal.

1 MR. SREBNICK: Judge, I apologize if I was personal.
2 I certainly didn't mean to be. I have a client to defend and
3 all I know is that on Tuesday of this past week while I'm in
4 the middle of preparing an appellate brief in the Eleventh
5 Circuit I get a criminal history printout of my two -- two of
6 my critical witnesses.

7 I was shocked. I thought it was the truth. I
8 assumed that I was wrong. I wanted Mr. Brathwaite to bring
9 his passport to me this weekend when I came out to Los Angeles
10 so I could see for my own eyes whether I was wrong or right.
11 I wasn't prepared to file something with the Court unless I
12 could be sure myself that I wasn't being hoodwinked. So I
13 don't know how I could have done it any sooner than I did.

14 THE COURT: Mr. Hankerson.

15 MR. HANKERSON: Yes. I'd like to start off by
16 asking the judge to bear with me for a minute, because I
17 brought other people here because I've never been in a
18 situation where in print, anywhere, these type of things have
19 been written about me and using my family name.

20 The irony here is the fact that I've talkened (sic)
21 to people who wanted to ask me things about this young man.
22 So -- and they were from the Federal Government. I don't
23 know what job they had or what office they operated out of,
24 but people did call me to ask me about him, and I wish they
25 had called me to ask me about me. It would have been very

1 simple.

2 I did not relish reading what I read yesterday. My
3 family -- I flew in for my ex-wife and one of my best friends,
4 Gladys Knight. Reverend Jackson was here until he had to
5 leave last night with the president, and he sent Tracy here
6 from the Rainbow Coalition to tell you who I am.

7 And I really was coming here to try to tell you who
8 he was. So at some point just for the record if they could
9 say what they came to say -- and Bernard Parker, who I've been
10 friends for thirty years, who is a commissioner from Detroit
11 -- I would like at some point just to cover my name, because
12 you never know where this disinformation may go.

13 MS. STANDISH: I would apologize to Mr. Hankerson.
14 I know I've gotten a little hot under the collar and I'm --

15 THE COURT: You got real hot under the collar.

16 MS. STANDISH: Yes, Your Honor. And I still am hot
17 under the collar and I apologize for that. I would apologize
18 to Mr. Hankerson and Mr. Brathwaite if indeed this is a
19 different Mr. Brathwaite, which it does sound like. So I do
20 apologize for that, but I don't -- it's the allegations that
21 were I think made by Mr. Srebnick that I was responding to,
22 and not to anything that was said or done or submitted by --

23 THE COURT: See, the biggest fault of the lawyer
24 sometimes is they start talking without thinking.

25 MR. HANKERSON: Well, I would like to give a

1 background of what I've been doing for the last thirty-five
2 years and the reason why I met this young man and gave him a
3 job.

4 Ever since my education at the Central State
5 University and University of Michigan and my relationship with
6 Reverend Jackson that goes back over thirty years, I've tried
7 to help rehabilitate my young brothers. I've tried to do that
8 whenever I could.

9 I built an organization in Detroit in 1971 that now
10 still is ran (sic) by my partner, Bernard. We're one of the
11 most prolific Black organizations in America in turning young
12 people around. I joined the Muslim faith about four years ago
13 and I further began to move even more heavily into reaching
14 out and mentoring as many young people as I could.

15 I've been in entertainment for the same thirty year
16 period because I utilize the natural resource of the
17 entertainment industry, which is the only resource that us
18 Black folks had to get to raise money for our organizations.
19 I met my wife during one of the telethons we did for sickle
20 cell anemia in 1972, and I created a program that we take
21 youngsters from wherever we could, put them in baseball teams
22 and other typical things that you do, and we had a success
23 rate.

24 Reverend Jackson helped us at times. Oprah Winfrey
25 helped us at times. I could always count on Gladys Knight and

1 the Pips to help us at times. So I had developed the acumen
2 to look at people and to take a chance. And it's because of
3 that that I heard about this kid coming out of jail.

4 He was a Muslim, and the Muslim faith, for whatever
5 reason, whether people like it or not, has a pretty good
6 success rate with taking young men that have embraced it and
7 helping them see their way and using the support base of a God
8 concept, a very rigid one where you have to pray every day
9 when everybody else is asleep, that you have to let your
10 forehead touch the ground so you can submit five or six times
11 a day.

12 It is with that foundation that when I met this
13 young man and I talked to him about his life that a spark hit
14 me that he wanted to be somebody. And I talked about his dad
15 with him. There was a void. There was no light. Talked
16 about his mom, his relatives. There was a light. So I
17 decided to give him a job, to give him a chance.

18 I raised two -- three sons. Gladys and I had three
19 boys together and we had two daughters. I have a little
20 three-year-old. And in the process of that I know how
21 important my role is with a young brother. If you're not
22 there they may want to do good, they may run the streets with
23 some bad guys.

24 They may know a few good guys, but if there's not a
25 support base there they don't have a shot. If there's not

1 somebody there to support it, to reinforce who they should be
2 and when they should be that person they don't have a chance.

3 In interviewing him and talking to him about how
4 fervently did he believe in Allah, he convinced me he
5 believed. And I asked Jimmy, I said, Jimmy, why did you do
6 things after you embraced God. He didn't know. He couldn't
7 answer it.

8 But I knew the answer from my years of working with
9 young brothers who had great mamas. I had the greatest mama
10 and daddy in the world, and as a youngster and teenager I
11 wasn't always right, but I had a support base. Jimmy did not
12 have that male figure support base.

13 He had the Imam. He had the concept of God, but we
14 all know that the concept of God has to be reinforced by
15 others. That's why we have church. That's why we fellowship
16 with others that believe of equal yoke. In my times with him
17 I gave him a job and I set him next to me every day.

18 My son runs the company. He's here today. My other
19 son is 22, owns a restaurant that me and his mom put together
20 for him in Atlanta. Our boys do well because we support them.
21 So I included Jimmy with my boys, and every day I know where
22 he is. I know what he's thinking about.

23 I know if he did his prayers because he now has a
24 support base, and I don't argue with you whatever the past
25 was. I don't know what was the past. But I know his present

1 and his future is hopeful. I think when you incarcerated him,
2 you reached him.

3 Everybody in here is a sinner, but you reached this
4 one, and he doesn't want to sin anymore. He really wants a
5 shot. I think if you give him that shot to continue, the last
6 eight months of his life this young man entered my staff --
7 and everybody knows music.

8 Let me tell you a little bit. In your papers you
9 say he's a part of the hip-hop world. I take offense to that.
10 I have a label, and my label has an album coming out with
11 "Romeo Must Die," major Warner Brothers movie that my artist
12 is the star of that thirty-eight million dollar Joe Silver
13 movie, and this record doesn't have any profanity on it.

14 Well, it's a hip-hop record and we did that
15 intentionally, and he was one of the people that said, We
16 don't need any cursing on this record. That's where his head
17 is. He needed something that was missing and he found it and
18 that unformed process of incarceration gave it to him.

19 I really am thankful to you. You saved a Black
20 man's life. Look, we saved it. He's in another level of it
21 now. He's in the process of totally maintaining the
22 rehabilitation, and if you give him a chance to maintain it I
23 contend, me mentoring him every day like I do, he won't be
24 back here.

25 And if he does something, I'll bring him back here

1 because I'm not going to tolerate it from the kids I birthed
2 and I'm not going to tolerate it from him. My label is not
3 one of those labels that all the artists go to jail, not one,
4 not nobody on my label.

5 We had a after-party after Soul Train last week. We
6 were the only after-party that didn't have a shooting or a
7 fistfight. I'm not tolerating that, and I will step to any of
8 these young brothers myself if they even look like they want
9 to do that. He is with me.

10 Give him to me. He has help in his life. He didn't
11 have it daddy like I did. Give him to me and he won't be back
12 here. I'm asking this not for him, but everybody that is
13 around us needs to see some success. There's a lot of
14 thuggery in hip-hop.

15 There's a lot of thuggery in the Black community. I
16 came from Harlem, New York. I knew what it took to duck
17 crime. But he needs a shot. He doesn't need to be handcuffed
18 anymore and caged up, because if you cage him like an animal
19 you're going to continue to have an animal.

20 He needs to be nurtured now. Whatever he did, he
21 did. Whatever we think he did, we think he did. He needs a
22 shot. Just as you thought I was somebody else, you may just
23 be wrong about him. Thank God that I had the money and my
24 friends had the money and Jessie Jackson's one of my best
25 friends, so he can send a letter.

1 Jessie wanted to be here because he likes me. I
2 love him. Mr. Farrakon wanted to be here because he loves me
3 and I love him. We got more love than you white folks care to
4 think about. What we think about, hey, Here's Barry
5 Hankerson. He must be a crook. He's in the record business.
6 Got to be right.

7 Nobody needs to call him. You could have called me.
8 I talk to everybody. Not only am I not a crook, I love my
9 people. I love your people. We need to come together and
10 collapse some of this. There's a lot of young people that
11 could be saved.

12 Reverend Jackson, Tracy, myself and Hurricane Carter
13 spent three hours Friday at the Pitchers County Jail where we
14 showed the Hurricane film to a room of inmates, one of the
15 most inspirational days I've had in the last ten years,
16 because 90 % of the guys there were sentenced for drugs and
17 things that overwhelmed their lives.

18 And there was a man standing in front of them, Ruben
19 Hurricane Carter, who was incarcerated for twenty years and
20 nobody believed him, that could stand there and said, I make
21 it; I'm not bitter. Amazing. That's the spirit. He's got
22 that spirit.

23 I wouldn't risk my name -- that's already been
24 tarnished by standing up for one of my brothers -- I wouldn't
25 risk this if I didn't believe in my heart that he's

1 rehabilitatable. He's on the road to it, and I beseech you to
2 please give him a shot, recommend it so he can do it.

3 Give him to me, and I tell you if he breaks the law
4 I'll bring him back to you. But give him a shot. I know so
5 many young Black men and women in America that had some
6 terrible lives. We've go now -- we're on the program now to
7 turn some of these prisons into universities.

8 We're on a program now where we have better jails
9 than we have colleges. I know. I went to a Black school. My
10 kids went to Pepperdine. Wow. I went to Pepperdine and I
11 couldn't believe it. There was a resort. We got to change
12 some of this, and we start with him.

13 We take -- God took the lowest and raised it to the
14 highest. You're going to read about him. He's good. One of
15 his jobs is to take an artist and get him in the studio on
16 time. This kid is punctual. He's never late, and we did give
17 him a limo service, a Town car service, because I don't
18 believe in those stretch things.

19 But we did give him a service to get back and home.
20 But he knew our little company didn't have a lot of money. He
21 said, Well, thanks, because he's way out on Staten Island. We
22 got a good little company of good people. I'm not going to
23 turn my back on any young man that's desiring to be better.

24 It's my whole life. It's what I am. And I've got a
25 pretty good track record, and this young man has made the big

1 step because he is convicted to be with God. I believe that.
2 And with that power I can be a conduit. I can be a support
3 factor. I can be the one that says, What you thinking about;
4 did you pray hard today.

5 We've got brothers here praying in this room all the
6 while we been sitting here. Let it reach your heart. Please
7 let it reach your heart. Your Honor, let it reach your heart.
8 Thank you.

9 THE COURT: Thank you, sir.

10 MR. SREBNICK: Judge, if I may just add a few
11 comments to that, to Mr. Hankerson. In terms of specifics,
12 Judge, we have other people here in Court who would testify,
13 if they were called, that Mr. Rosemond's talent as a person
14 who is able to develop music and musical talent really is in
15 the top one percent.

16 You know, everybody calls himself or fashions
17 himself as a music producer or an A&R person is somebody who
18 has the ability to spot talent. But we have individuals such
19 as Y-Clef Jon from the Fujis who sang at John F. Kennedy,
20 Jr.'s funeral. Please stand.

21 The Haitian gentleman who bonded with Mr. Rosemond,
22 because Mr. Rosemond is also Haitian. And Y-Clef, if he were
23 to address the Court, would say to the Court that Jimmy is
24 really responsible for helping him in his career and for, you
25 know, refining his music and his ability to get his music to

1 the audience.

2 Others would say the same thing about Mr. Rosemond.
3 This is not an individual who comes before the Court who
4 really doesn't have a talent and we're asking for mercy and
5 for the Court to release him into society with nothing and no
6 ability to pursue his dreams.

7 This is a person who obviously has that ability and
8 everybody who has encountered him in the music industry would
9 attest to the fact that he really is a superstar in what he
10 does. And I think under the tutelage of Mr. Hankerson and
11 under, you know, the strict requirements or whatever the Court
12 would impose in terms of supervised release, the Court has the
13 best chance of making sure that this gentleman doesn't come
14 before the Court again and doesn't involve himself in the
15 criminal justice system.

16 His past is horrible, Judge. It's ugly. There's no
17 -- we're not running away from that. What we're saying to the
18 Court is the Court now has an opportunity -- perhaps it's the
19 final opportunity for this gentleman -- but we're asking that
20 the Court, now that he has a chance, he's got a son, he's got
21 a job, he's got a fiancé, to allow him to change his life.

22 If the Court imposes a lengthy term of incarceration
23 it may be over for him for all intents and purposes. He may
24 not have the support system when he gets out. He has it now
25 and we're asking that the Court consider a sentence at

1 nineteen months, which is thirty-eight months off the range of
2 fifty-seven to seventy-one, and so that when he gets out he
3 can resume what he is doing now.

4 And he's been such an inspiration to his young son
5 who didn't have him for the first five years of his life. And
6 now he looks up to Jimmy as really a role model. His son
7 loves Jimmy and Jimmy loves his son. And really, if you take
8 him away maybe, you know, it'll really drive a wedge between
9 that relationship.

10 We're not minimizing the offense, Judge. It was a
11 -- he committed a crime. He's pled guilty to it and he's
12 going to suffer the consequences. We're simply asking the
13 Court, in light of the delay and in light of all these other
14 factors, in light of that he does have a promising career
15 ahead of him, that the Court consider a sentence at the low
16 end of the range that starts at nineteen months.

17 THE COURT: Mr. Rosemond, you have a right to
18 address the Court, as well.

19 MR. ROSEMOND: I would first like to say I apologize
20 to the Court. I'd like to apologize to my family. I'd also
21 like to say, Your Honor, if there is a crystal ball in front
22 of you, you was able to look into that crystal ball eight
23 months ago and you gave me a chance to see what those eight
24 months, I would do with those eight months, Your Honor.

25 And if that crystal ball is to look into my future,

1 you have looked into that future of mine. I would very much
2 like to be there for my son and my fiancé, my friends and the
3 things that I love to do, as far as I have found that thing
4 that I love to do so much now, Your Honor.

5 Before, I had no objective. I had no plan and I
6 must commend Barry Hankerson for giving me a chance to
7 redefine my life and to find that goal that I wanted to
8 attain. With that, Your Honor, if the eight months that I
9 have been home, if that was any, any view into the future of
10 my life, you have seen it. Thank you.

11 THE COURT: Ms. Standish, anything in conclusion?

12 MS. STANDISH: Your Honor, I would like to say just
13 that I hope Mr. Hankerson is right. He's certainly very
14 eloquent and I know he believes what he says, and I would
15 expect that the other members of the audience, if they spoke,
16 would be as eloquent and as believing of what they said.

17 I, unfortunately, the Government's position, I don't
18 believe that we in eight months have seen someone who has
19 totally turned around. I would point out that Your Honor
20 actually has an overlapping option between the two ranges that
21 you have set of nineteen to thirty-three months and thirty-
22 three to forty-seven months that would at least legally
23 obviate any issues with respect to, not with the departure
24 itself, but what the range of the departure should have been.

25 Whether or not that range was thirty-eight or

1 twenty-four, that range overlaps both. But again, Your Honor
2 -- and I do have to say I do thank all of the people in the
3 audience for coming. It's been an education for me, but I
4 have trouble -- having been a narcotics prosecutor for a while
5 and having seen many defendants, and having seen many
6 defendants make the same arguments, but without as eloquent a
7 support system to make the arguments for them, and I have seen
8 them back in court again. So I'm a little jaded and I
9 apologize for that.

10 THE COURT: All right. I'm going to depart on the
11 basis of pre-indictment delay, which caused, in this Court's
12 opinion, a lost opportunity to serve concurrent sentences, and
13 those are the sentences that the defendant served in New York
14 in the state court, and in the federal court in North
15 Carolina, ten levels, which would put him at a offense level
16 of 9, and the range there is eighteen to twenty-four months,
17 criminal history category Roman numeral number V.

18 SENTENCING OF JAMES JIMMY ROSEMOND

19 THE COURT: FIRST OF ALL, IT'S ORDERED THAT THE
20 DEFENDANT SHALL PAY THE UNITED STATES A TOTAL FINE OF SIX
21 THOUSAND DOLLARS (\$6,000), WHICH SHALL BEAR INTEREST AS
22 PROVIDED BY LAW. THE FINE SHALL BE PAID IN FULL IMMEDIATELY.
23 IT IS ORDERED THAT THE DEFENDANT SHALL PAY TO THE UNITED
24 STATES A SPECIAL ASSESSMENT OF ONE HUNDRED DOLLARS (\$100),
25 WHICH IS DUE IMMEDIATELY.

1 PURSUANT TO THE SENTENCING REFORM ACT OF 1984, IT IS
2 THE JUDGMENT OF THE COURT THAT THE DEFENDANT, JAMES J.
3 ROSEMOND, IS HEREBY COMMITTED ON COUNTS ONE AND TWO OF THE
4 FIRST SUPERSEDING INDICTMENT TO THE CUSTODY OF THE BUREAU OF
5 PRISONS TO BE IMPRISONED FOR A TERM OF NINETEEN MONTHS.

6 THIS TERM CONSISTS OF NINETEEN MONTHS ON EACH OF
7 COUNTS ONE AND TWO OF THE FIRST SUPERSEDING INDICTMENT TO BE
8 SERVED CONCURRENTLY. UPON RELEASE FROM IMPRISONMENT THE
9 DEFENDANT SHALL BE PLACED ON SUPERVISED RELEASE FOR A TERM OF
10 THREE YEARS.

11 THIS TERM CONSISTS OF THREE YEARS ON EACH OF COUNTS
12 ONE AND TWO, ALL SUCH TERMS TO RUN CONCURRENTLY UNDER THE
13 FOLLOWING TERMS AND CONDITIONS.

14 ONE, THE DEFENDANT SHALL COMPLY WITH THE RULES AND
15 REGULATIONS OF THE U.S. PROBATION OFFICE AND GENERAL ORDER
16 318.

17 TWO, THE DEFENDANT SHALL REFRAIN FROM ANY UNLAWFUL
18 USE OF A CONTROLLED SUBSTANCE. THE DEFENDANT SHALL SUBMIT TO
19 ONE DRUG TEST WITHIN FIFTEEN (15) DAYS OF RELEASE FROM
20 IMPRISONMENT AND AT LEAST TWO PERIODIC DRUG TESTS THEREAFTER
21 AS DIRECTED BY THE PROBATION OFFICER.

22 THREE, DURING THE PERIOD OF COMMUNITY SUPERVISION
23 THE DEFENDANT SHALL PAY THE SPECIAL ASSESSMENT AND FINE IN
24 ACCORDANCE WITH THIS JUDGMENT'S ORDERS PERTAINING TO SUCH
25 PAYMENT.

1 FOUR, AS DIRECTED BY THE PROBATION OFFICER, THE
2 DEFENDANT SHALL PROVIDE TO THE PROBATION OFFICER A SIGNED
3 RELEASE AUTHORIZING CREDIT REPORT INQUIRIES, AND SHALL PROVIDE
4 AN ACCURATE FINANCIAL STATEMENT WITH SUPPORTING DOCUMENTATION
5 AS TO ALL ASSETS, INCOME AND EXPENSES OF THE DEFENDANT. IN
6 ADDITION, THE DEFENDANT SHALL PROVIDE FEDERAL AND STATE INCOME
7 TAX RETURNS AS REQUESTED BY THE PROBATION OFFICER.

8 AND FIVE, THE DEFENDANT SHALL NOT OBTAIN OR POSSESS
9 ANY DRIVER'S LICENSE, SOCIAL SECURITY NUMBER, BIRTH
10 CERTIFICATE, PASSPORT OR ANY OTHER FORM OF IDENTIFICATION IN
11 ANY NAME OTHER THAN THE DEFENDANT'S TRUE LEGAL NAME WITHOUT
12 THE PRIOR WRITTEN APPROVAL OF THE PROBATION OFFICER. FURTHER,
13 THE DEFENDANT SHALL NOT USE FOR ANY PURPOSE OR IN ANY MANNER
14 ANY NAME OTHER THAN HIS TRUE, LEGAL NAME.

15 Those are the terms and conditions of your
16 supervised release in this case, Mr. Rosemond. Do you
17 understand all the terms and conditions?

18 MR. ROSEMOND: Yes, I do.

19 THE COURT: And do you accept those terms and
20 conditions?

21 MR. ROSEMOND: Yes.

22 THE COURT: Now, if you violate any of the terms and
23 conditions you're brought back before this Court for a
24 hearing. After a hearing is held if it is determined that you
25 have in fact violated those terms and conditions, you can be

1 sent away to a federal institution for an additional period of
2 time. Do you understand?

3 MR. ROSEMOND: Yes.

4 THE COURT: Now, in this case I gave you a big
5 break. I gave you a break because I think that in this -- the
6 totality you lost the right to serve a concurrent sentence and
7 there was pre-indictment -- caused by pre-indictment delay.

8 Now, you've got a lot of friends out here. You
9 know, you've tasted the good life. There's no reason to go
10 back to the bad life. All right. Now, has there been --
11 there was no plea agreement, was there, in this case?

12 MR. SREBNICK: There was, Judge.

13 THE COURT: Was there a waiver of appeal, or is this
14 conditional appeal, I think?

15 MR. SREBNICK: This is conditional on the
16 suppression issue, Judge.

17 THE COURT: All right. You have a statutory right
18 to appeal your sentence, particularly if you think the
19 sentence is contrary to law. With few exceptions, any notice
20 of appeal must be filed within ten days of judgment being
21 entered in your case. That's ten days from today's date.

22 If you're unable to pay the costs of an appeal or a
23 filing fee, you may apply for leave to appeal on what is
24 called forma pauperis. If you do not have counsel to act on
25 your own behalf, if you so request, the clerk of the court

1 will file a notice of appeal on your behalf.

2 Now, with regard to serving a sentence, the
3 Government is going to be arguing that you be immediately
4 remanded. I don't see any need for that. I'll let him self-
5 surrender.

6 MS. STANDISH: Your Honor, I was not going to argue
7 for immediate remand. I was only going to argue that he not
8 be permitted to stay out pending the entirety of his appeal.
9 I don't see any reason that he needs to be taken away today,
10 but I would argue that under 3143(b) that the Court must
11 remand him pending appeal, unless it determines -- the Court
12 determines that his appeal raises a question of law likely to
13 result in a reversal.

14 MR. SREBNICK: Judge, that --

15 THE COURT: Well, I think it's an issue that's going
16 to be decided by the Appellate Court.

17 MR. SREBNICK: Judge, the plea agreement, there was
18 an agreement that he be permitted to stay out on bond pending
19 appeal.

20 MS. STANDISH: Unless he violated his pre-trial
21 conditions, and I believe -- and that was not a determination
22 that the Court had to make. In this case, the Government
23 stands by and Officer Wodzinsky stands by and Officer Reiger
24 stands by their recommendations that he be remanded because of
25 violation of pre-trial conditions.

1 THE COURT: Well, I'm not going to remand him. But
2 I got to warn you, they're going to be looking at you up,
3 down, sideways, every which way. So you know, you've got to
4 have that in your mind at all times.

5 MR. ROSEMOND: I do, Your Honor.

6 MS. STANDISH: Your Honor, is the Court --

7 THE COURT: All right. Now, wait. Wait I'm not
8 done yet.

9 FURTHER SENTENCING OF JAMES JIMMY ROSEMOND

10 THE COURT: IT'S FURTHER ORDERED THAT DEFENDANT
11 SURRENDER HIMSELF TO AN INSTITUTION DESIGNATED BY THE BUREAU
12 OF PRISONS.

13 Now, this was agreed that he would stay out pursuant
14 to the plea agreement until the appeal was decided?

15 MS. STANDISH: Your Honor, yes, but the Government
16 believes that it did not have to stand by that provision,
17 because it specifically says in the plea agreement, very
18 specifically, unless he violates any condition of his pre-
19 trial release.

20 THE COURT: All right.

21 MS. STANDISH: So that's why the Government is
22 recommending that he be allowed to self-surrender, but within
23 the next few weeks.

24 THE COURT: Well, self-surrender at an institution
25 designated by the Bureau of Prisons.

1 MR. SREBNICK: Your Honor, would the Court entertain
2 a written motion for bond pending appeal based --

3 THE COURT: I would. I would.

4 MR. SREBNICK: -- based on the factors under the
5 statute?

6 THE COURT: Well, I think it's going to do a lot --
7 have a lot to do with his employment. I mean, you show me
8 he's got good employment and I will most likely allow him to
9 remain out. But I've got to, you know, take care of this
10 today.

11 FURTHER SENTENCING OF JAMES JIMMY ROSEMOND

12 THE COURT: HE SELF-SURRENDERS ON OR BEFORE 12:00
13 P.M., APRIL 11TH, AND IF NO INSTITUTION IS DESIGNATED THEN HE
14 IS TO SELF-SURRENDER AT THE UNITED STATES MARSHALL'S OFFICE AT
15 312 NORTH SPRING STREET, AND UNLESS A FURTHER STAY ON
16 EXECUTION OF JUDGMENT IS GRANTED BY THE COURT FROM WRITTEN
17 MOTION.

18 MS. STANDISH: Your Honor, if I may. It might
19 streamline the briefing. I would not be contesting that he
20 has, after what we heard today, you know, a good job, the
21 issue that I believe that the Government would be briefing
22 and, therefore, maybe we would not be at cross-purposes, is
23 the requirement that the Court find by clear and convincing
24 evidence that the Defendant is not likely to flee or pose a
25 danger.

1 That would not be the issue we would be bringing,
2 but that the appeal is not for purposes of delay, raises a
3 substantial question of law likely to result in a reversal.
4 That's what the Court has to find by clear and convincing
5 evidence.

6 And the issue that if we're going to do it on
7 written briefing, I would request that we brief --

8 THE COURT: Well, I think -- look it, here's the
9 situation. You know, they made a complete record for
10 appellate purposes. You knew at the time they made that
11 record that they were going to go up on appeal. I think the
12 Appellate Court's going to decide this case. Why have him
13 serve the sentence if I'm in error?

14 MS. STANDISH: Your Honor, the statute simply says
15 that you need to find by clear and convincing evidence --

16 THE COURT: I think he's got --

17 MS. STANDISH: -- that you think that it's likely to
18 be reversed.

19 THE COURT: I don't know about that, but I mean, I
20 think that --

21 MS. STANDISH: That's --

22 THE COURT: -- there's a strong issue for an
23 Appellate Court to determine, and I think that's clear and
24 convincing.

25 MS. STANDISH: Then, Your Honor, I would just --

1 THE COURT: I don't think it's a -- if you're asking
2 me whether I think it's a frivolous appeal. It isn't a
3 frivolous appeal.

4 MS. STANDISH: That's not the issue, Your Honor.
5 That's why I -- I'm just asking at this point that we just
6 limit the briefing to the issue, which is, the issue is
7 whether or not, according to the statute and the case law, is
8 whether it's a substantial question likely to result in
9 reversal, and not argue it now, but that's just be the issue
10 that we brief to Your Honor.

11 MR. SREBNICK: Judge, I don't know that we need to
12 spend time briefing it. At the time the plea agreement was
13 entered into the issue was the same.

14 THE COURT: I agree with you on that.

15 MS. STANDISH: No. The plea agreement was entered
16 into before the hearing, Your Honor. We did not have a
17 complete record and we did not have the Court's findings.
18 That is entirely a different issue.

19 THE COURT: You know --

20 MR. SREBNICK: It was --

21 MS. STANDISH: So we entered into the plea agreement
22 without any knowledge of what the Court's findings would be,
23 and therefore, without any understanding of whether or not a
24 court is likely to reverse the conviction.

25 THE COURT: I'm missing something here, but it

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appears that you just won't let go of this guy.

MS. STANDISH: Well, then, Your Honor, let us at least do the written briefing so that I can put the law before Your Honor as to why the statute mandates the remand.

THE COURT: Well, I don't --

MS. STANDISH: Now, you may -- the Court may disagree after reading it and make the findings that the statute requires, which are a finding by clear and convincing evidence that the Court believes its prior ruling is likely to be reversed.

MR. SREBNICK: We briefed this issue at length before the hearing, I don't know any more that I could file, other than, you know, how many more trees I can kill.

THE COURT: It's a close question, to be very frank with you, and I think the Appellate Court's going to have the last word on it. I can't get anymore clearer than that. All right. We'll stand in recess.

MR. SREBNICK: Thank you, Your Honor.


PROCEEDINGS CONCLUDED AT 5:26 P.M.

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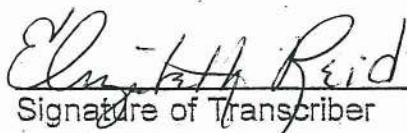
CERTIFICATION

I (WE) CERTIFY THAT THE FOREGOING IS A CORRECT TRANSCRIPT FROM THE ELECTRONIC SOUND RECORDING OF THE PROCEEDING IN THE ABOVE-MENTIONED MATTER.

LUTZ & COMPANY, INC.
100 WEST LEMON
SUITE 103
MONROVIA, CALIFORNIA 91016
(626) 303-1113



Federally Certified Owner / *Manager*



Signature of Transcriber

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