

IN THE UNITED STATES DISTRICT COURT FOR
THE DISTRICT OF THE DISTRICT OF COLUMBIA

_____)	
UNITED STATES,)	
)	
v.)	Crim. No. 21cr40
)	Hon. Trevor McFadden
GEOFFREY SILLS,)	
Defendant.)	
_____)	

DEFENDANT’S SUPPLEMENT TO POSITION ON SENTENCING

Comes now Defendant Geoffrey Sills, by counsel, and supplements his Position on Sentencing (Doc 570) in response to the Government’s Sentencing Memorandum (“Memorandum” Doc 574) and the Government’s Response to the Court’s Sentencing Order (“Response” Doc 583).

Government’s Sentencing Memorandum

The government incorrectly calculates the Guideline sentencing recommendation.

Robbery

The government incorrectly urges a two level enhancement under USSG Sec. 2B3.1(b)(3) for Bodily Injury (Memorandum at 26). The stipulated evidence does not support such an enhancement as the victim could not attribute any injury to Defendant.

The government incorrectly urges a six level enhancement for Official Victim under USSG Sec. 3A1.2(c). This enhancement, however, is premised on the commission of an Assault during the commission of the offense. The stipulated evidence supports no such conclusion.

The correct Guideline level attributed to this offense is 20.

Assaulting, Resisting or Impeding Law Enforcement

The Guideline recommendation for this offense is properly calculated under USSG 2A2.4 which applies with greater particularity to the charge than does Sec. 2A2.2 for Aggravated Assault, for which offense, urged by the government (Memorandum at 28), there is insufficient evidence in the stipulated evidence.

Application Note 2 to USSG Sec. 3A1.2 (Memorandum at 28) specifically precludes application of that section to offenses falling under USSG Section 2A2.4.

The correct Guideline level attributed to this offense is 13.

Obstruction of Official Proceeding

This Court has already spoken to the government's proposed enhancements of 11 levels (eight and three, respectively) contingent on a finding that the offense obstructed a "judicial proceeding" (Government Memorandum at 28). This Court rejected such enhancements against several January 6th defendants to include co-defendant David Judd, and, separately, against Hunter Seefried in the case of *United States v. Hunter Seefried*, 21cr287.

Application Note 1 to USSG Sec. 3A1.2 specifically precludes that section's application to an offense wherein the victim is "an organization, agency or the government." The government identifies no specific law enforcement officer victimized by this offense. Nor does the evidence. Rather, the government has cast the events of January 6th as an attack on our very Republic - "a 'grave danger' to our democracy itself" (Response at 5).

The correct guideline level attributed to this offense is 14.

Aggregate Guideline Calculus

Defendant's Position on Sentencing correctly reflects the aggregate Guideline calculus as Level 21, Criminal History Category 1.

Government's Response to the Court's Sentencing Order

In what should properly be styled a motion to modify the Court's order, the government files out of time its Response to say that it has not complied with the Court's order – specifically that it has not produced the government's sentencing recommendations in the cases the government was ordered to review.

The government explains that to do so would be “a significant burden” of “limited probative value” (Response at 2, 4). The government further instructs that the information is “not warranted, will “not facilitate [the Court's] goal,” and would “not be instructive” in any event because the Court already has the Guidelines to follow (Response at 5, 6). Finally, the government reminds the Court that the information it has elected to withhold is none of the Court's business as it is not “publicly available,” and prosecutors should be assumed to “have properly discharged their duties” (Response at 8).

The Department of Justice is essentially the world's largest law firm. Query whether someone could not have been found to review the government's sentencing memoranda in the subject cases for their sentencing recommendations (generally in the last paragraph)?

Further, the government resorts to grossly exaggerated fearmongering to persuade the Court to impose a sentence utterly out of proportion. As an example, the government references the use by rioters of “concussion grenades” against police. A grenade is a military ordnance designed to kill. Had any been used in the close quarters of January 6th, numerous fatalities and serious blast injuries would have resulted.

Conclusion

Defendant has no criminal record. There is no evidence he hurt anyone. He found himself in a circumstance created by forces greater than he (e.g., a President exhorting the

protesters to action and a police presence utterly inadequate to its task of the day) – and unlikely in the extreme ever to be repeated. His remarks to the Court will convey that he is sincerely sorry.

The government now avers that Defendant should receive nine years confinement. Prior to the entry of the stipulated evidence undergirding his conviction, however, the government had agreed to a guideline level of 63 to 78 months (susceptible to argument for variance) in a plea agreement executed by Defendant which was replaced at the government’s suggestion by the stipulated evidence. Courts “hold prosecutors engaging in plea bargaining to the most meticulous standards of both promise and performance.” *United States v. Clark*, 55 F. 3d 9, 14 (1st Cir. 1995).

The Court should deny the government’s request to modify its order and sentence Defendant in accord with the sentences received by two New York lawyers who threw a Molotov Cocktail into a police cruiser during the riots that followed the murder of George Floyd. The government requested 18 to 24 months confinement for each – they received 12 and 15 months, respectively.¹

Respectfully submitted,

GEOFFREY SILLS
By Counsel

/s/
John C. Kiyonaga

510 King Street, Ste. 400
Alexandria, Virginia 22314
Telephone: (703) 739-0009
Facsimile: (703) 340-1642

¹ *United States v. Mattis et al*, EDNY 1:20CR203-BMC, ECF. No. 94. See also Thomas, David, *Judge Sentences Second New York lawyer in Molotov cocktail case*, *Reuters*, January 26, 2023; <https://www.reuters.com/legal/judge-sentences-second-new-york-lawyer-molotov-cocktail-case-2023-01-27>.

E-mail: john@johnckiyonagaa.com

Counsel for the Defendant

Certificate of Electronic Service

I hereby certify that on March 20, 2023, I electronically filed the foregoing with the Clerk of Court using the CM/ECF System, with consequent service on all parties.

/s/
John C. Kiyonaga