

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA
HON. LAWRENCE J. O'NEILL

UNITED STATES OF AMERICA,)	
)	1:16-cr-[REDACTED] LJO-SK0
Plaintiff,)	
)	SENTENCE
vs.)	
)	
[REDACTED],)	
)	
Defendant.)	
_____)	

Fresno, California

Monday, September 24, 2018

REPORTER'S TRANSCRIPT OF PROCEEDINGS

APPEARANCES OF COUNSEL:

For the Government:	KIMBERLY SANCHEZ Assistant U.S. Attorney 2500 Tulare Street, Rm. 4401 Fresno, California 93721
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For the Defendant:	DAYS LAW FIRM 2300 Tulare Street, Suite 240 Fresno, CA 93721 BY: MARC DAYS
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REPORTED BY: PEGGY J. CRAWFORD, RDR, CRR, Official Reporter

Proceedings recorded by mechanical stenography, transcript produced by computer-aided transcription.

1 Monday, September 24, 2018 Fresno, California

2 9:42 a.m.

3 THE COURT: [REDACTED] number 10 on calendar.

4 MR. DAYS: Good morning, your Honor. Marc Days with
5 [REDACTED], who is present, in court. He is in custody.

6 MS. SANCHEZ: Kim Sanchez representing the United
7 States.

8 THE COURT: Sir, your name, please.

9 THE DEFENDANT: [REDACTED].

10 THE COURT: Mr. [REDACTED], have you had a chance to
11 review the Presentence Report with your counsel?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: Do you have any questions that remain?

14 THE DEFENDANT: No, sir.

15 THE COURT: The Court has received and reviewed the
16 Presentence Report, the 11(c) agreement, defendant's
17 objections to the fine, the defendant's letter requesting the
18 drug program, the defendant's sentencing memorandum, and the
19 government's response to the objection concerning the fine.

20 The Court notes the offense level to be 30. History
21 Category is III. Guideline range is 121 to 151.

22 The recommendation is on Counts 1, 2, and 3, 48
23 months, 48 months, and 40, to run consecutively, for a total
24 of 136.

25 The Court has considered the 3553(a) factors.

1 Mr. Days, do you wish to be heard further?

2 MR. DAYS: Yes, your Honor. It is not my intention
3 to go over the sentencing memo that I filed. I think I have
4 laid out what our position is. I just want to make a couple
5 of remarks.

6 The first one is, your Honor, whenever I get a case,
7 one of the things -- and we get to the point of sentencing,
8 one of the things I consider is how did we get to this point.

9 And I believe that my sentencing memo describes how
10 we got to this point; in particular, paragraph 103 of the PSR,
11 the first sentence.

12 I didn't put that specifically in the sentencing
13 memorandum, but I do cite to it, and I hope the Court can just
14 take a moment to look at the first sentence.

15 THE COURT: Where are you looking?

16 MR. DAYS: The first sentence of paragraph 103 of the
17 PSR.

18 THE COURT: Hang on one second. I'm there, yes.

19 MR. DAYS: I think this case is an absolute tragedy.
20 And I understand that Mr. [REDACTED] is going to be punished.

21 I don't think anything that these young men -- and my
22 client was 20 years old when he was arrested. And it is, as a
23 father, disturbing to me that these men, these young men, this
24 man in particular, this young man, was shown that this is
25 okay.

1 Through his entire life, there is nothing good about
2 it, there is nothing right about it. I don't think any young
3 man has a real chance in this environment. These values.

4 THE COURT: Does he have a greater chance in prison?
5 I mean what do we do? Do we just ignore what he has done?

6 MR. DAYS: No.

7 THE COURT: I mean these people that he is doing this
8 to need protection from him. So while I understand exactly
9 what you are saying concerning how did we get here, I get it,
10 I understand what you are saying. But what do we do about it?

11 MR. DAYS: So that's the question. This -- I know
12 that the Court has been on the bench for, as the Court said
13 today, 29 years.

14 I have full confidence in the experience that you
15 have, and the number of defendants that you have seen go
16 through your court, that you will impose a sentence that is
17 reasonable and no harsher than is necessary.

18 The recommendation by Probation is 11 years and four
19 months. And that's also the recommendation of the People.

20 The ultimate question I think in front of the Court
21 is, is that what is necessary? Is that number what is
22 necessary?

23 I don't think it is. I don't think a 20-year-old
24 being sentenced to 11 years and four months, that's what it
25 takes. Not with this upbringing, not with these values.

1 THE COURT: So what do we have, no matter what I give
2 him, what do we have when we get out?

3 MR. DAYS: Well, what we have is a wonderful federal
4 supervision system. That's what we have.

5 THE COURT: Oh, but that doesn't work when you have
6 nothing to work with. And you know, I can't -- you can't have
7 this argument both ways, you know.

8 If he is where he is now because of the background,
9 when he gets out, he is not only going to have the background
10 that you are describing, but he is going to have a prison
11 background too.

12 So what exactly are we going to have when he is done
13 and he gets out on federal supervision?

14 MR. DAYS: Well, one thing is, as noted by the
15 probation report, it is the first time I have seen this in a
16 probation report, although the Court, there may be other times
17 it's been in the report, but one of the things pointed out is
18 the development of the brain. I do think that's something to
19 consider.

20 What we will have is we will have a more mature
21 individual. I mean that's generally what happens, right? The
22 older we get, the more mature we get.

23 Here, we have got the probation report talking about
24 literature in which there is more of an emotional response
25 that young men have opposed to a more intellectual, reasoned

1 response. And that's based on the development of the brain.

2 So to answer the Court's question, I think that when
3 Mr. Maxey eventually gets out of custody, what we will be
4 dealing with on supervision is a person that is going to be
5 more mature. Also a person that will receive some hopeful
6 rehabilitation and some punishment. The question is how much.

7 Given the fact that he will be on supervision, I
8 think the Court can -- and we all know the Court can have a
9 grip on somebody for quite a period of time if they don't
10 straighten up.

11 What I see is -- and it does break my heart, because
12 I see a young man here who has been nothing but respectful to
13 me throughout the entire time that I have represented him, and
14 not that that's anything unusual, but I see a young man that
15 has a potential. He is not dumb. He is smart. He is
16 charismatic. He has a great personality.

17 But how can that flourish? How can that flourish
18 when you have been raised by this? It can't. It is stifling.

19 I mean paragraph 103, the first sentence, that is --
20 I mean a child that sees this and thinks that this is
21 acceptable is going to be headed for trouble. And I don't
22 think 11 years and four months is what has to happen here for
23 a 20-year-old, raised like this.

24 I -- there is nothing acceptable about what Mr. [REDACTED]
25 has pled guilty to. It is troubling. I am not here to

1 minimize it at all.

2 What I'm here to say is this is a 20-year-old young
3 man, raised like this, who, it is not surprising to anybody
4 that we are right here right now.

5 But there is a brighter day. I'm asking the Court to
6 consider what is absolutely -- what do we have to do to try to
7 get this young man on the right track? And I don't think 11
8 years and four months is what we have to do.

9 THE COURT: Do you wish to be heard?

10 THE DEFENDANT: Me?

11 THE COURT: You.

12 THE DEFENDANT: Yes.

13 THE COURT: Go ahead.

14 THE DEFENDANT: First of all, I want to apologize to
15 the victims, to their family, and my family. I just want to
16 say I understand I made a lot of bad choices at a young age,
17 but that's still no excuse for my actions. I'm here to take
18 responsibility as a man.

19 Everything else I got to say came with the letter.

20 THE COURT: Does the government wish to be heard?

21 MS. SANCHEZ: Your Honor, the government requests the
22 Court impose a sentence of 136 months. The government
23 recognizes the arguments defense has made in this case.

24 I would note that in the plea agreement, the
25 defendant acknowledges that 136 months is within the range of

1 reasonable sentences that could be imposed in this case.

2 I recognize that there is a balancing that the Court
3 has to look at, a balancing that does include the defendant's
4 background and history, the fact that he was brought up in the
5 environment that defense has set forth and that appears in, at
6 least in part, in the plea agreement.

7 There are several factors that, while the defendant
8 is young and he was raised in an environment that didn't teach
9 him necessarily better character or better choices, it seems
10 to me that almost anyone would know that certain of the
11 choices that the defendant made were wrong.

12 And even in this case, I believe that's evidenced by
13 the fact that much of what the defendant and his
14 coconspirators did was not -- or contained an element that was
15 an effort to avoid being detected by law enforcement.

16 The human trafficking activity that the defendant
17 engaged in, the conversations that were intercepted between
18 this defendant and several of the female victims who were
19 prostituting for him and making a substantial amount of money
20 doing so, were quite disturbing.

21 The level of the threat of violence and the
22 discussions of assaults that occurred, that was disturbing.
23 And I don't think any person could think that that was okay
24 and that wasn't a problem.

25 The conversations the defendant engaged in with his

1 coconspirators, the actions they took in searching for rival
2 gang members to protect their turf, to retaliate, to gather
3 guns, to engage in retaliatory shootings, those conversations
4 and the actions they took, I don't believe that anybody can
5 think, at 20 years old, that that's okay, even if that's the
6 environment in which they were raised.

7 And I think that the sentence the Court imposes, I
8 think 136 months is reasonable and takes into account
9 punishment and rehabilitation and retribution, the factors
10 that are required to be considered for sentencing.

11 The defendant made several admissions in his plea
12 agreement, admitting to giving his codefendant, [REDACTED]
13 Johnson, contact information for another coconspirator who
14 could supply a firearm. And admitting to gathering
15 coconspirators for a meeting in early April of 2016, at which
16 the defendant and his coconspirators discussed retaliation,
17 admitting sending prostitutes in and outside of California.

18 I think that 136-month sentence accounts for those
19 choices, the charges the defendant pleaded to, the admissions
20 the defendant made.

21 And the government requests that the Court follow
22 Probation's recommendation and the government's request for
23 136 months.

24 THE COURT: I understand the background issue, but
25 the part that is most disturbing to me is that you or anybody

1 else could think it is all right to treat another human being
2 the way you treated human beings.

3 (The Defendant nodded his head in the affirmative.)

4 THE COURT: These women are human beings. And they
5 are a lot more than physical parts that are up for sale.
6 These people that you manipulated have a right to have a
7 relationship that probably, in most instances, has now been
8 taken away from them, because they will not know the
9 difference between a physical act and an emotional commitment
10 that goes along with the physical acts. They will not be able
11 to separate their past from their future. This is
12 life-altering. It is without question.

13 I wish you could sit here in my position over the
14 years, and watch as we select juries, and have -- in sex cases
15 especially, and one of the unpleasantnesses of selecting those
16 jurors is to have to ask the question: Has anything of this
17 nature occurred in your lifetime?

18 And the numbers of people, both men and women, who
19 have been abused physically, sexually, who, decades later
20 cannot hold their emotions intact as they explain that they
21 couldn't possibly sit on such a case because of what this
22 would bring back to them.

23 Now, I know you weren't thinking of that, the future
24 of all of these women. But I'm telling you, this sort of
25 thing is life-altering. And once you've manipulated these

1 folks, it is forever. It is not just: It is over now. We
2 got the money. The act is done, it is over.

3 It is not over, anymore than when I sentence you,
4 that it is over. It is not over.

5 Also, the violence that the prosecutor is talking
6 about is real. I mean you are acting as though, when you are
7 negotiating these things and being a part of their occurring,
8 that you are dealing with marbles or something, not with real
9 people. People who die because of what you are planning and
10 plotting.

11 The prosecutor is correct. I don't care whether you
12 are 20 or 12, you know the difference between right and wrong.
13 And you knew this was wrong.

14 I don't think that you or your counsel, either one,
15 is telling me that this isn't a big deal. That's not what I'm
16 hearing.

17 But the sentence can't be just about you. The
18 sentence has to be about victims. It has to be about
19 deterrence. It has to be making a statement about punishment,
20 and about this would be foolish for others to get involved in
21 it.

22 Do you understand what I'm saying to you?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: Anything else, Mr. Days?

25 MR. DAYS: I would like to respond very briefly to

1 the point made by the government about knowing right or wrong.
2 This is not black and white. It is complex.

3 THE COURT: It always is.

4 MR. DAYS: And I cannot agree necessarily with the
5 statement that, whether you are a 12-year-old, 12 or 20, you
6 should know the difference between right or wrong.

7 And the reason I say that is because our country has
8 a history, well-documented history, of people not knowing the
9 difference between right and wrong, based on how they have
10 been raised, and the pain that they have caused to other
11 people because they don't look like them. They may not have
12 the same sexual orientation. We have a history of raising
13 people that grow up, inflict pain on people, and many people
14 in the community may think that's acceptable.

15 And I'm talking about, for example, racism. The
16 history of our country, where people have been killed,
17 brutalized, and it's been accepted for countless years.

18 THE COURT: Not by decent people.

19 MR. DAYS: Well, some people would consider those
20 folks decent. It is all -- so my point is simply this: That
21 how you are raised is not of some small moment. It is not
22 insignificant. Children are highly impressionable. And I
23 don't believe Mr. [REDACTED] was raised in a way to have that
24 empathy, to be able to put himself in somebody's shoes and
25 understand the pain that he was causing.

1 THE COURT: I may agree with that part, but I don't
2 agree that your client didn't know that this was wrong.

3 Are you saying that your client believes that what he
4 did, at the time he did it, he didn't know that it was wrong?

5 MR. DAYS: I am not saying that. What I'm saying is
6 that I don't believe that emotionally, he was able to fully
7 understand that the depth of the pain that he was causing.

8 THE COURT: Oh, you are talking about consequences.
9 That's exactly what I was referring to when I said, "I doubt
10 very much that at the time you were doing this, that you
11 thought about, knew about, or even considered the fact that
12 what you were doing to these women was forever."

13 I get that part, but I still think he knew that what
14 he was doing was wrong.

15 MR. DAYS: And I'm not here to suggest that that's
16 not the case, your Honor.

17 My argument is simply that it is 11 years and four
18 months; is that number a sentence sufficient, but not greater
19 than necessary? I think that -- I mean he hasn't done -- the
20 biggest sentence he has done before this was how many days?

21 THE DEFENDANT: 151.

22 MR. DAYS: 151 days.

23 THE COURT: Okay. Anything else?

24 MR. DAYS: No, your Honor.

25 THE COURT: Anything else, Ms. Sanchez?

1 MS. SANCHEZ: I would submit with respect to the
2 sentencing, and I would ask that the Court make the
3 preliminary order of forfeiture final.

4 And we would submit on Mr. Baker's filing regarding
5 the special assessment.

6 THE COURT: Any objection to that?

7 MR. DAYS: I'm sorry?

8 MS. SANCHEZ: We asked that the preliminary order of
9 forfeiture be made final, and we submit on Mr. Baker's
10 response to your objection on the special assessment.

11 MR. DAYS: No objection, your Honor. I'm sorry.

12 THE COURT: All right. With regard to the objection
13 on the special assessment, the objection is overruled. The
14 Court does agree that the position that the defendant's
15 anticipated future earnings, especially at such a young age
16 now, for his lifetime is appropriate to assess.

17 Pursuant to the Sentencing Reform Act of 1984, it is
18 the judgment of the Court that you are committed to the
19 custody of the Bureau of Prisons, to be imprisoned for a term
20 of 48 months on Count 1, 48 months on Count 2, and 24 months
21 on Count 3, to be served consecutively, for a total of 120.

22 You shall pay a special assessment of \$300, and the
23 assessment of \$5,000, as required by the Justice for Victims
24 of Trafficking Act of 2015, under 18 United States Code 3014,
25 payment to begin immediately.

1 The preliminary order of forfeiture filed in
2 August of this year is made final and shall be incorporated
3 into the judgment.

4 Upon release from imprisonment, you shall be placed
5 on supervised release for a term of 36 months on Counts 1, 2,
6 and 3, to be served concurrently, for a total of 36.

7 Within 72 hours of release from the custody of the
8 Bureau of Prisons, you shall report in person to Probation in
9 the District where you are released.

10 While on release, you shall not commit another
11 federal, state, or local crime; shall not illegally possess
12 controlled substances; shall cooperate in the collection of
13 DNA, as directed by Probation; shall comply with the standard
14 conditions recommended by the Sentencing Commission and
15 adopted by the Court; shall refrain from any unlawful use of a
16 controlled substance; shall submit to one drug test within 15
17 days of release from imprisonment and at least two thereafter,
18 not to exceed four per month.

19 The Court is going to order the nine special
20 conditions, which I can read or incorporate by reference.

21 MR. DAYS: Incorporation is fine.

22 MS. SANCHEZ: Incorporation is fine.

23 THE COURT: Done and ordered.

24 Are you requesting geographically?

25 MR. DAYS: Yes, your Honor. Herlong, Terminal

1 Island, or Lompoc.

2 THE COURT: The Court will make those recommendations
3 in that order as requested as they accord with security
4 classification and space availability.

5 The Court is going to recommend the 500-hour Bureau
6 of Prisons Substance Abuse Treatment Program.

7 I believe that he pled to a superseding information.
8 Was he named in the original indictment?

9 MS. SANCHEZ: He was, your Honor. The government
10 moves to dismiss the counts naming this defendant, just as to
11 this defendant.

12 THE COURT: Granted. Appellate rights have been
13 waived.

14 Anything else?

15 MR. DAYS: No, your Honor, thank you.

16 THE COURT: That's the order.

17 PROBATION OFFICER: Ross Micheli from the Probation
18 Office.

19 THE COURT: Yes?

20 PROBATION OFFICER: Your Honor imposed a sentence of
21 120 months?

22 THE COURT: Yes.

23 PROBATION OFFICER: That is technically a
24 below-guideline sentence. I was just wondering if the Court
25 could state its reasons.

1 THE COURT: The specific reason for that -- two,
2 actually -- and they are exactly what was argued by defense
3 counsel, and that is, one, the age. He was at a specifically
4 young age when this occurred.

5 And secondly, with regard to the upbringing, it was
6 abysmal. It was disgraceful. It was, frankly, almost beyond
7 comprehension. He just didn't get it, and that's not an
8 excuse, but it is an understanding of what happened. Those
9 are the reasons.

10 (The proceedings were concluded at 10:08 a.m.)

11 I, PEGGY J. CRAWFORD, Official Reporter, do hereby
12 certify the foregoing transcript as true and correct.

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Dated: 22nd of April, 2020

/s/ Peggy J. Crawford
PEGGY J. CRAWFORD, RDR-CRR