

UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT

UNITED STATES OF AMERICA : CRIMINAL NO. 3:06CR161 (EBB)  
 :  
 v. :  
 :  
 MATTHEW IANNIELLO : Date: May 2, 2007

**UNITED STATES' SENTENCING MEMORANDUM**

The defendant Matthew Ianniello is the 86 year old former acting boss of the Genovese Organized Crime Family. Save for a period of approximately six years in the 1990s when he was incarcerated on racketeering charges, Mr. Ianniello has for decades served the Genovese family well as one of its top "earners." At this late junction in his career, Mr. Ianniello faces in this case a term of incarceration of 24 to 30 months and a fine of \$4,000 to \$40,000. For the reasons that follow, the government respectfully submits that a sentence at the high end of this range - to be served concurrent to a 15 month sentence recently imposed in another district - is appropriate.

**Background**

On December 20, 2006, the defendant pleaded guilty to Count Two of the Indictment, which charges that he and others engaged in a racketeering conspiracy designed to control Connecticut's refuse industry, and Count Sixty-Two, which charges him with conspiring to defraud the United States Revenue Service (IRS). See 18 U.S.C. § 1962(d) (Racketeering Conspiracy) and 18 U.S.C. § 371 ("Klein

conspiracy"). The defendant faces a maximum term of incarceration of twenty years on Count Two and a maximum term of incarceration of five years on Count Sixty-Two.

In this case, the government conducted eleven months of court-authorized wiretaps on a number of telephones connected to James Galante,<sup>1</sup> owner of approximately twenty-nine carting-related entities in southwestern Connecticut. (PSR at ¶ 15) The wiretaps ran from August 2004 to July 2005, at which point law enforcement officials executed over thirty-five search warrants, including searches of Mr. Ianniello's residence and Mr. Galante's office. Agents seized thousands of boxes of documents, including a sheet of paper from Galante's office that listed a series of quarterly payments made by Galante to the defendant between August 2001 and April 2005. The payments stopped after the government executed the aforementioned searches in July 2005. With respect to the search of Mr. Ianniello's residence, the Connecticut FBI seized approximately \$130,680 in cash.<sup>2</sup> In addition to the wiretaps and searches, agents interviewed many witnesses connected to the case.

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<sup>1</sup> This Court authorized wiretaps on phones utilized by, among others, Galante, Richard Galietti (Galante's lead salesman), Christopher Rayner (accountant to defendants Milo and Galante), Ciro Viento (Galante's operations manager), and Richard Caccavale (Galante employee). To date, Viento and Caccavale have pleaded guilty to the racketeering conspiracy charged in Count Two; the other listed defendants await trial.

<sup>2</sup> As part of his plea agreement, Mr. Ianniello has agreed to forfeit this cash as fruits of the racketeering enterprise.

This body of evidence shows that for a number of years prior to the bringing of the indictment in this case, Mr. Ianniello was a Capo in the Genovese Organized Crime Family, ultimately ascending to the rank of Acting Boss (PSR at ¶ 48) and, in that capacity, accepted "tribute payments" (also referred to as a "mob tax") from individuals in the refuse industry in exchange for permitting them the right to operate garbage hauling businesses, including transfer stations. (PSR at ¶ 18) Individuals who agreed to make these payments, including Mr. Ianniello's co-defendant James Galante, did so with the expectation that disputes within the industry would be resolved favorably with Mr. Ianniello's backing and, in situations warranting greater assistance or "backing," it would be provided. (PSR at ¶ 18)

In this case, Mr. Ianniello tasked an individual to pick up cash from Galante on a quarterly basis. This courier has admitted to serving as the conduit for the cash payments by Galante to Ianniello. In addition, a second individual within Mr. Galante's company has stated that Galante regularly set aside cash skimmed from his trash businesses to serve as the payments to Mr. Ianniello's courier. (PSR at ¶ 17) The wiretapped conversations, moreover, show that Galante made these quarterly tribute payments to Mr. Ianniello in exchange for "backing" if ever necessary. In this regard, the intercepted conversations show that Galante's accountant and co-defendant, Christopher Rayner, met with Ianniello

at Ianniello's Florida residence in the winter of 2005 and reported back to Galante about the meetings. FBI surveillance revealed that Rayner was picked up in a parking lot and driven to Mr. Ianniello's residence. In an intercepted conversation that followed the meeting, Rayner advised Galante that Ianniello viewed Galante as the best partner Tommy Milo (a co-defendant who previously served jail time in connection with a prosecution in New York concerning that region's trash industry) ever picked. (PSR at ¶ 18) And in another intercepted conversation months later, Galante complained to Rayner that although he was paying Rayner's "friend on Long Island" (a frequent code used to refer to Ianniello), he was not getting his money's worth. (PSR at ¶ 18) In essence, these quarterly "tribute" payments to Ianniello were designed to secure mob backing in the event it was ever needed to resolve disputes in the garbage industry and, moreover, to foster a reputation as being mob-connected.<sup>3</sup> (PSR at ¶ 18)

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<sup>3</sup> In 2005, for instance, Galante learned that an individual who he believed had cooperated with the government in a prior investigation into the mob's involvement in the trash industry might be a silent partner negotiations concerning the purchase of a landfill. In an intercepted wiretap conversation, Galante asked co-defendant Milo for permission to tell the individual that "Long Island says hello" in order to intimidate the individual. Similarly, the FBI interviewed a customer of Galante who reported that when she tried to cancel her garbage contract with Galante's company, Galante threatened her by asking whether she watched The Sopranos. Galante then stated that "I wouldn't do that (switch providers) if I were you." (PSR at ¶¶ 19 & 20)

In his sentencing papers (Defendant's Letter dated May 1, 2007, at pages 3-4), defense counsel contrasts his client's activities to the more violent proclivities of other members of the Genovese Crime Family - arguing that Mr. Ianniello is a kinder, gentler Boss. While the government has no evidence to specifically link this defendant to acts of violence in the case at bar, the fundamental reality nonetheless remains: a lifetime membership in the Genovese Crime Family, capped by promotion to Acting Boss, does not happen by accident.

During Mr. Ianniello's guilty plea of December 20, 2006, the government explained that at trial it would prove the existence of an association-in-fact enterprise among individuals associated with various carting companies in Connecticut, including but not limited to the companies listed in the indictment and that the evidence would further establish that for many years in New York and the New York metropolitan area, including Connecticut, garbage haulers affiliated with certain organized crime groups have asserted without legal justification that they have a permanent "property right" to every "stop" that they collect. Under this property rights system, these "stops" (primarily commercial accounts) remain with the controlling carter for as long as that carter is in business, regardless of whether the particular customer sells to a successor entity. In short, the property rights system dictates that participating carters will "respect" a fellow carter's claim

to an account, either by not competing for that work or, when solicited by the customer, by declining to pursue the opportunity or bidding at a pre-arranged price designed to lose the contract.

The property rights system has, from time to time, been extended to apply to contracts to operate transfer stations, and members of the property rights system have on occasion paid "tribute" payments, also known as a "tax," to members of organized crime for "backing" or "support." These payments represent a portion of the participating carters' profits. Carting companies that have "bucked the system" by competing and attempting to compete in an area for work have faced threats of economic and physical reprisal.

One of the effects of the property rights system has been to stifle competition by preventing free competition for waste hauling and related services. The lack of competition and free enterprise, in turn, harms consumers who are forced to pay inflated prices for the carters' services.

Some of the members of the enterprise and their associates promoted a climate of fear through violence, threats of violence, threats of property damage, economic sanctions and threats of economic sanctions.

Concluding its proffer, the government also stated that the quarterly cash payments to Ianniello constituted income to the defendant and that in tax years 2001 and 2002, the defendant

knowingly failed to report this income on his returns and in 2003 and 2004, the defendant did not file income tax returns and, consequently, avoided paying taxes on this income in any of these years. See Guilty Plea Transcript at pages 26-30.

When asked by this Court whether he disagreed with any of the government's representations, Mr. Ianniello stated that he did not. In addition, the defendant's counsel read the following statement into the record on behalf of Mr. Ianniello, who has difficulty speaking:

I admit that between approximately 2001 and 2005, I received cash payments from members of Connecticut's trash industry who participated in what is described in the indictment as the property rights system.

These payments were the fruits of an association-in-fact enterprise that existed among individuals affiliated with various carting companies in Connecticut, including but not limited to the companies listed in the indictment.

I failed to declare these payments as income on my 2001 and 2002 tax returns. Additionally, although I continued to receive these cash payments in 2003 and 2004, I avoided paying taxes because I did not file tax returns for those years.

See Guilty Plea Transcript at pages 31-32.

#### **Guidelines Calculation**

The parties have stipulated to a sentencing range of 24 to 30 months of imprisonment, based on a Criminal History Category III and a total offense level 15. This calculation is based on the following stipulations: (1) the racketeering offense carries a base level 19; (2) the defendant's role in the racketeering offense

warrants a two level leadership enhancement for his having dispatched the emissary to retrieve the tribute payments; (3) the racketeering and tax offenses should be grouped pursuant to U.S.S.G. § 3D1.2(c); (4) the defendant is entitled to a three level reduction for acceptance of responsibility; and (5) the government does not object to the defendant's request for a three level departure pursuant to U.S.S.G. § 5H1.4, based on Mr. Ianniello's physical impairments, which are well-documented in the PSR.

The parties have further agreed that no other downward or upward departures from the sentencing range set forth above are warranted and that a sentence within the agreed range of 24 to 30 months of imprisonment is reasonable. *See United States v. Crosby*, 397 F.3d 205 (2d Cir. 2006). Accordingly, neither party will seek such a departure or seek any adjustment not set forth in the plea agreement.

Mr. Ianniello asserts that this Court has discretionary authority to credit him for time spent in home confinement, or more aptly to consider his home confinement as a factor warranting a sentence of 24 months' imprisonment. *See Def's Memo* at page 13. The government objects to this basis, however. In essence, the defendant seeks credit on his sentence for pretrial detention when, in point of fact, he has not been subjected to pretrial detention. This claim is unavailing.

The Sentencing Reform Act expressly provides that a

defendant should be given credit towards service of his post-conviction sentence only for "time he has spent in official detention *prior to the date the sentence commences...* that has not been credited against another sentence." 18 U.S.C. § 3585(b) (emphasis added). In *United States v. Wilson*, 503 U.S. 329 (1992), the Supreme Court held that the determination of sentencing credit is within the exclusive jurisdiction of the Bureau of Prisons ("BOP"), subject to judicial review, and thus is not a matter for the courts at the time of sentencing. *Id.* at 333. In *United States v. Edwards*, 960 F.2d 278, 282-83 (2d Cir. 1992), the Second Circuit expressly held that pre-trial home confinement is not "official detention," *id.* at 282-83, and, thus, "that a defendant. . .who is released on bail pending sentence[] is not entitled to sentencing credit for the time spent on bail, during which he was placed under electronic monitoring and largely restricted to his residence[.]" *Id.* at 283. See also, *Martinez v. United States*, 19 F.3d 97 (2d Cir. 1994); *United States v. Insley*, 927 F.2d 185, 186 (4th Cir.1991); *United States v. Woods*, 888 F.2d 653, 655 (10th Cir.1989).

The Second Circuit's holding in *Edwards* was affirmed by the Supreme Court in *Reno v. Koray*, 115 S.Ct. 2021, 2024, n.1 (1995). In *Koray*, a defendant pleaded guilty to money laundering and, while awaiting his sentence, was released on bail with the condition that he be confined to a community center. The defendant remained at

the community center for approximately five months before beginning a 41 month sentence of imprisonment. The BOP refused to grant the defendant credit for the five months spent at the community center. On appeal, the Supreme Court agreed with the BOP, finding that the term "official detention" in 18 U.S.C. § 3585(b) did not include time served in a community center while on bail awaiting a final sentence. *Koray*, 115 S.Ct. at 2025. In so holding, the Court observed that defendants afforded pre-trial release - even under restrictive conditions - are not in custody and not entitled to credit:

The Bail Reform Act of 1984 provides a federal court with two choices when dealing with a criminal defendant who has been "charged with an offense" and is awaiting trial . . . or who "has been found guilty of an offense and . . . is awaiting imposition or execution of sentence." The court may either (1) "release" the defendant on bail or (2) order him "detained" without bail. A court may "release" a defendant subject to a variety of restrictive conditions, including residence in a community treatment center. If, however, the court "finds that no condition or combination of conditions will reasonably assure the appearance of the person as required and the safety of any other person and the community," the court "shall order the detention of the person," by issuing a "detention order" "directing that the person be committed to the custody of the Attorney General for confinement in a corrections facility." *Thus, under the language of the Bail Reform Act of 1984, a defendant suffers "detention" only when committed to the custody of the Attorney General; a defendant admitted to bail on restrictive conditions, as respondent was, is "released."*

*Id.* at 2025 (emphasis added, internal citations omitted).

The defendant's reliance on *United States v. Carpenter*, 320 F.3d 334 (2d Cir. 2003), is misplaced. *Carpenter* involved a distinct issue based on different facts. The question for the court in *Carpenter* was whether home detention erroneously imposed and served as part of a sentence, as opposed to pre-trial release, could constitute a mitigating circumstance not taken into account by the Guidelines when the defendant was re-sentenced. *Id.* at 344-347. Accordingly, this Court should reject the defendant's claim that time spent on pre-trial release should justify leniency in a sentence.

The government also objects to the claim that Mr. Ianniello's conviction in New York is essentially part and parcel of the instant matter and, therefore, should be treated more lightly. While the two cases certainly share the theme that Mr. Ianniello acted as a high ranking member of an organized crime syndicate, and arguably his conduct would be subject to the grouping analysis of U.S.S.G. § 3D1.2 had the cases been charged in one indictment, the defendant's actions in New York concerned labor union violations unrelated to the collection of tribute payments from Connecticut trash industry. Given this reality, the government does not object to the imposition of a concurrent sentence; however, under the circumstances, the common thread of Genovese Crime Family

involvement cannot translate into an argument for any additional leniency.

With respect to the defendant's other arguments - the defendant's assistance with a government investigation, his heroism in World War II, and his exemplary conduct during his prior period of incarceration - the government recognizes that these are all considerations that the court can consider in determining an appropriate sentence.<sup>4</sup>

### Discussion

The PSR calculates the defendant's criminal history as Category IV, based on his recent conviction in the Southern District of New York.<sup>5</sup> (PSR at ¶¶ 8, 48 and 49) In addition, it is possible that the defendant's 1986 conviction in the Southern District of New York, for which Mr. Ianniello was incarcerated for

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<sup>4</sup> As to the defendant's reliance on his World War II record, the government presumes the defendant relied upon this argument when he was sentenced to jail over fifteen years ago and, if so, perhaps he has already benefitted sufficiently.

<sup>5</sup> During plea negotiations in case at bar, the undersigned learned that the defendant stipulated to a Criminal History Category III in his New York case (both parties apparently missed a New Jersey conviction). Given that the defendant was attempting to resolve both cases simultaneously, but had to plead somewhere first, equitable considerations dictated that the defendant not be penalized one point for not attempting to consolidate the cases for one disposition. Thus the undersigned stipulated to Category III and stands by that agreement. As noted at footnote 6, *infra*, the PSR calculates a higher range of 37 to 46 months of imprisonment base in part on the defendant's higher criminal history. The government nonetheless stands by its agreement that a sentencing range of 24 to 30 months applies.

six years (PSR at ¶ 45), should have scored three criminal history points. The PSR also suggests that the defendant be given a four level role enhancement. (PSR at ¶ 42)<sup>6</sup> Notwithstanding the PSR's higher Guidelines calculation, the Government stands by its agreement that a sentence between 24 and 30 months of imprisonment constitutes a fair, just and reasonable disposition to this matter. The government respectfully submits that the issues raised in the PSR - viz. Mr. Ianniello's long criminal history and greater leadership role - should be a factor used to assess where within the 24 to 30 month range to impose sentence as opposed to grounds for a higher sentencing range.

#### **Conclusion**

Mr. Ianniello has served as the Acting Boss of the Genovese Crime Family, after having been a highly successful "earner" for the syndicate for many years. (PSR at ¶ 48) The defendant has been convicted of racketeering on prior occasions, as well as obstruct of justice, fraud and interference with commerce. (PSR at ¶¶ 43-48) For these offenses, Mr. Ianniello was imprisoned until

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<sup>6</sup> In adding the four level role adjustment, the PSR inadvertently forgets that the parties already have stipulated to a two level role adjustment. In other words, under the PSR's analysis, the defendant's adjusted offense level should be 20 (19 - 3 + 4 = 20), not 22. See PSR at ¶ 42. Assuming the PSR meant to include the defendant's acceptance of responsibility and the stipulated three level departure pursuant to U.S.S.G. § 5H1.4, Mr. Ianniello's total offense level would be 17, which yields a sentencing range of 37 to 46 months of imprisonment when a Criminal History Category IV is applied. Thus the suggested range of 63 to 78 months of imprisonment is inaccurate.

September 29, 1995. Thereafter, he served a term of supervised release until June 10, 2001. Not coincidentally, the government's evidence in this case shows that Galante's cash payments to the defendant started in August 2001. Simply put, absent incarceration or government supervision, the defendant has resorted to criminal activities and endeavors. Against this backdrop, the government respectfully submits that a sentence at the high end of the agreed upon range is an appropriate disposition.<sup>7</sup>

Respectfully submitted,

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<sup>7</sup> The government does not object to the defendant's request that this Court's sentence be imposed to run concurrent to the 18 month term of incarceration recently imposed in the defendant's case in the Southern District of New York in 05CR774(KMW). Lastly, while the PSR reports that the defendant does not appear to have the financial ability to pay a fine, it should be noted that Judge Wood fined Mr. Ianniello \$25,000.

**Certificate of Service**

I hereby certify that on May 2, 2007, a copy of foregoing Memorandum in Aid of Sentencing was filed electronically and served by mail on anyone unable to accept electronic filing. Notice of this filing will be sent by e-mail to all parties by operation of the court's electronic filing system or by mail to anyone unable to accept electronic filing as indicated on the Notice of Electronic Filing. Parties may access this filing through the court's CM/ECF System.

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