

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	Criminal Action
v.)	No. [REDACTED] 210327-GAO
)	
CHARLES F. [REDACTED] and STEVEN)	
GROGAN, [REDACTED])	
)	
Defendants.)	

BEFORE THE HONORABLE GEORGE A. O'TOOLE, JR.
UNITED STATES DISTRICT JUDGE

DISPOSITION

John J. Moakley United States Courthouse
Courtroom No. 9
One Courthouse Way
Boston, Massachusetts 02210
Thursday, July 17, 20[REDACTED]
2:36 p.m.

Marcia G. Patrisso, RMR, CRR
Official Court Reporter
John J. Moakley U.S. Courthouse
One Courthouse Way, Room 3510
Boston, Massachusetts 02210
(617) 737-8728

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APPEARANCES:

OFFICE OF THE UNITED STATES ATTORNEY
By: Timothy A. Landry, Assistant U.S. Attorney
John Joseph Moakley Federal Courthouse
Suite 9200
Boston, Massachusetts 02210
On Behalf of the Government

NATHAN LAW OFFICES
By: Geoffrey G. Nathan, Esq.
132 Boylston Street
5th Floor
Boston, Massachusetts 02116
On Behalf of the Defendants

1 P R O C E E D I N G S

2 THE CLERK: All rise.

3 (The Court enters the courtroom at 2:36 p.m.)

4 THE CLERK: The United States District Court for the
5 District of Massachusetts. Court is in session. Be seated.6 For a sentencing, the case of United States versus
7 Charles [REDACTED] and Steven Gro [REDACTED], 13-10327. Would counsel
8 identify yourselves for the record, please.9 MR. LANDRY: Tim Landry for the United States. Good
10 afternoon, your Honor.

11 THE COURT: Good afternoon.

12 MR. NATHAN: Good afternoon, your Honor. Attorney
13 Geoffrey Nathan for Charles [REDACTED] and Steven Gro [REDACTED].14 THE COURT: And I think everyone will probably agree
15 we can handle these two matters simultaneously?

16 MR. LANDRY: Yes, your Honor.

17 THE COURT: Each defendant appears for sentencing on
18 conviction of one count of theft of public money, the
19 conviction coming upon the entry of a plea of guilty in each
20 case.21 I have a final presentence report as to each defendant
22 from the probation office, and in each case it proposes an
23 application of the United States Sentencing Guidelines to
24 determine what advice the Guidelines have with respect to an
25 appropriate range of sentence.

1 Are there any issues with respect to the Guidelines or
2 the Guidelines' recommendation that need to be resolved before
3 we proceed to other issues?

4 MR. LANDRY: None, your Honor.

5 MR. NATHAN: Just my pleadings that are before you,
6 your Honor.

7 THE COURT: Right. Well, I've reviewed the probation
8 office's calculation and I concur that it's an appropriate
9 application of the Guidelines. It yields, with respect to
10 recommendation as to custody, a suggested guideline range of 10
11 to 16 months.

12 The Guidelines range, of course, is one factor, an
13 important factor, but not by itself determinative. There are
14 other factors, so I'll entertain your recommendation for a
15 sentence with respect to each defendant as to all of the
16 sentencing factors.

17 MR. LANDRY: Yes, your Honor. The government's
18 recommendation is the same for each defendant. It's five
19 months of incarceration to be followed by 36 months of
20 supervised release with the first five months of that to be
21 served in home detention, a \$3,000 fine, restitution, and asset
22 forfeiture as charged in the information and as detailed in the
23 plea agreement.

24 The reason for that recommendation is as follows: Two
25 basic points -- and I made these points to some extent in a

1 memo that I filed back in May so I won't rehash all of that but
2 rather hit them rather briefly. Number one, it's a scheme that
3 involved a fair amount of planning and execution. This was not
4 simply a crime of opportunity; this is something that the
5 defendants had to sit down, plan out, carry out over a period
6 of years and cover up as time went on. And I think that's a
7 compelling factor in this case.

8 And secondly, it's a scheme that appears to have been
9 motivated by greed. And what I mean by that is I know
10 sometimes, particularly in these government benefits fraud
11 cases, we have defendants who are poverty-stricken, facing
12 homelessness or the like. And not that that excuses what they
13 do, but I know the courts are sometimes sympathetic to those
14 situations. But that doesn't appear to be at all what we have
15 here. We have two individuals living apparently a rather
16 comfortable lifestyle, according to the information in the PSR.
17 They didn't really need the money, again, not that that would
18 be an excuse, but they took it anyway. And I think that would
19 be a compelling factor in this case as well.

20 To sum up, your Honor, I think the way this case has
21 been charged it is just one count of theft of public money.
22 And the way it's been pleaded to, it results in basically the
23 most lenient guideline sentence available. We're recommending
24 the low end of the 10 to 16 months, and then we're taking that
25 low end of ten months and taking full advantage of the fact

1 that it's in Zone C, so we're recommending the 50/50 split so
2 they only end up with five months of incarceration.

3 This is a case that could have been charged as wire
4 fraud, which has a higher base offense level, but wasn't; it
5 could have been charged as aggravated identity theft, even.
6 And I cited some case law to that effect in the memo I filed.
7 That carries a two-year minimum mandatory sentence. It hasn't
8 been charged that way. There are -- there's passport fraud,
9 tax fraud, false statements to the government, bank fraud all
10 wrapped up in this scheme that they carried out, but none of
11 those crimes have been charged.

12 So, your Honor, I think we've boiled this down really
13 to the most simple basic crime that could be charged and
14 pleaded to, the lowest base offense level available and even
15 the lowest possible sentence of incarceration in that guideline
16 range, and I would simply suggest to the Court that there's no
17 need for any further reductions after all of that.

18 Unless the Court has any further questions, I'm
19 prepared to rest.

20 THE COURT: All right. Thank you.

21 MR. LANDRY: Thank you.

22 THE COURT: Mr. Nathan?

23 MR. NATHAN: Thank you very much, your Honor. First
24 of all, Assistant United States Attorney Landry does reference
25 the negotiations that went into the charging decisions. And I

1 commend his office for allowing defense counsel to have that
2 opportunity to negotiate the charging instrument.

3 Before coming in today, the clients demonstrated a
4 willingness to admit to what they did, and they did not
5 obstruct or do anything to impede the investigation. They fell
6 on the sword, so to speak. So to me the quick acceptance of
7 responsibility, they didn't obstruct justice in the
8 investigation or lie or do anything other than the fact that
9 they said that they did it.

10 In the course of time, we have today for your
11 consideration the further fact of a very substantial payment of
12 \$40,000 which Mr. Landry and I had discussed to make payable
13 today to the clerk's office. I have those two cashier's checks
14 on me. I was showing them to your clerk.

15 I think what this demonstrates to me is that these are
16 really two unique individuals who are prepared to take the hit
17 today, that were prepared to come into court today to make the
18 payments to show your Honor that they're candidates for either
19 home confinement or some form of straight probation.

20 What -- the nursing board is going to work with me
21 once this case is concluded so that hopefully where I've been
22 talking to the investigator about how this crime had nothing to
23 do with anything of defrauding a hospital or anything where he
24 was a nurse, they're going to work with me on that. And
25 they're waiting until -- to see, you know, what happens today.

1 So from my perspective is that it's a serious amount
2 of restitution, that the Court has to take into consideration
3 the levels of remorse, and also for how concerned they are
4 about their future and what incarceration would mean for both
5 of them as well as society. And for that purpose I enlisted
6 the assistance of Mr. Peter Russo, who's in the courtroom
7 today, who's a retired probation officer, helped me draft the
8 memorandum before the Court, where we talk about the
9 seriousness of the offense, to promote respect for the law and
10 to provide just punishment for the offense.

11 And I would suggest that there are going to be some
12 serious collateral consequences here to these two as a result
13 of the conviction today. The fact of the matter is that I
14 personally can't see how society would be protected any further
15 by incarcerating these two. I would, however, ask if your
16 Honor finds that it is in their best interest to be
17 incarcerated, that because ~~they are married~~ that you allow
18 them to stagger their offenses. That may provide them with
19 some basis upon which they can save their ~~marital~~ home.

20 I've thought a lot about how they would be best
21 protected from future conduct or how society would be best
22 protected from any future conduct. I don't see these two ever
23 doing this again, your Honor. I think that they've run their
24 course and realized that -- whether it's greed, whether it's
25 because of their backgrounds, all of which we wrote about

1 extensively in our memorandums, which are certainly
2 eye-popping. And a lot of it was really hard for them to spell
3 out. It's hard to talk about how your father and your brothers
4 committed suicide and it messed you up as a kid. It's hard to
5 talk about your own mental illness as an adult. Those are
6 really, really tough things to talk about.

7 It's tough to imagine the two of them being
8 incarcerated together, particularly where they have talked to
9 me so much about how they want to make things right and about
10 how difficult it would be if your Honor incarcerates them.
11 Where are they going to go from there? They don't have much
12 equity left in the house, and they're not going to have too
13 many other people funneling large sums of money at them in
14 order to help them straighten their lives out.

15 And as you could see from my memorandum, a grandfather
16 chipped in 20,000, a best buddy who got a business loan chipped
17 in 20 percent of his business loan and is going to employ him
18 so that he can both pay back the government, pay back his
19 buddy, work a steady job, pay the government back, do the right
20 thing, straight and narrow, no bogus passports. None of that.

21 I would suggest, your Honor, in my discussions that
22 they've asked for five years and they would owe a balance of
23 60-, and that these are one of the very few co-D's who are
24 actually going to make full restitution to the United States of
25 America which has given them so much, as it has all of us. And

1 I know that it's hard for me to say, but these two really feel
2 badly for what they did.

3 And one of them -- if you look at all those character
4 references from the hospitals about what a wonderful nurse he
5 was, he's never going to get that back if he's incarcerated.
6 And I know as someone who's had a lot of orthopedic surgery as
7 a young adolescent how much these male nurses meant to me when
8 I was suffering at Children's Hospital at age 16 all alone,
9 crying, juiced up on morphine, no one to talk to except my
10 nurse who cared for me.

11 And that's what we have these types of characters who
12 have done one wrong, bad fraud. But when push came to shove,
13 they manned right up and said, "I did it." They didn't want a
14 trial, they fessed up right away, they came up with a
15 substantial amount of restitution all to show the Court, We
16 take this seriously. We're going to pay this dough back. We
17 don't want to go to the can. That's the way it is.

18 If they wanted to go to the can, they would have
19 showed up with no money and just said, We'll take the five to
20 six months, whatever it is, or our Guidelines sentence, and go
21 away and be done with it. But that's not what these two are.
22 These are people who want to make it right. And based upon the
23 facts as I outlined in my memorandum to you, I don't believe
24 that my recommendation is that far of a stretch. I think that
25 a community-based sentence of probation with a period of home

1 confinement with electronic monitoring or community work
2 service and full restitution, balance to be paid -- well, 40
3 grand to be paid forthwith, downstairs in the clerk's office,
4 together with the \$100 special assessment, no fine because
5 they're going to be making the restitution payments. The two
6 of them do know how to live right and they will make this
7 right. And they can make their first monthly payment in a
8 month.

9 Yes? Would you be able to make your payment in a
10 month? Are you working now?

11 A VOICE: Yes.

12 MR. NATHAN: Oh, yeah. He started his job already.
13 You let me report to your Honor in 60 days as to where I'm
14 getting with the nursing board, and I'll come back and tell you
15 what efforts I've made and where I'm going to go in regards to
16 the nursing license.

17 And I think that those are fair -- that's fair, to
18 give them one chance to prove themselves to your Honor that
19 they mean business. And the business is: We're guilty. We
20 did it and we're going to pay it back. Not in ten years, not
21 in 20 years and not maybe if I had a scratch ticket or
22 something like that, but I'm going to work it off. I'm going
23 to earn a salary and pay a percentage of my salary back and pay
24 over a payment [sic] of time. And there's probably going to be
25 other people in the background maybe who come up who are going

1 to help them along the way, as they have so far. But based
2 upon their employment history I see no reasons why they
3 wouldn't be able to pay this back over a five-year period.

4 So for these reasons, together with all the other
5 reasons outlined in my memorandum, I would respectfully suggest
6 that these are two individuals who are very uniquely situated
7 and for who should get a one-time consideration and a chance,
8 and then to report back to you in 60 days as to how they're
9 doing and whether or not I'm going to be successful in
10 salvaging the nursing license. And that gives them the hope
11 that they need and the aspiration here to make the government
12 whole.

13 It's a rare opportunity. As I said to Mr. Landry, in
14 20 years I've never had anyone show up at court -- they have to
15 pay something back in restitution, but they don't because they
16 don't care because they're criminals and they're no good. And
17 these are good people.

18 Thank you.

19 THE COURT: Mr. [REDACTED], Mr. Gron[REDACTED] you each have an
20 opportunity to make a statement before I impose sentence. You
21 don't have to if you don't want to, but this is your chance to
22 do so if you wish.

23 A VOICE: No thank you.

24 THE COURT: No? Okay.

25 Well, it seems to me that the sentencing factors from

1 the statute that are most salient in these two cases are the
2 need for an appropriate punishment of a serious offense, and
3 the need for general deterrence, promote the respect for the
4 law so that others will be advised against similar offenses.
5 The need to protect the public from future crimes of these
6 defendants I think is a minimal factor in these circumstances.

7 In light of the sum of restitution and, in fact, the
8 initiative shown in payment of restitution, and the fact that
9 there will be a joint and several forfeiture of an identical
10 amount, I think it would be a sufficient and not greater than
11 necessary punishment to accept and essentially impose the
12 suggestion by the defense as to a period of probation with some
13 home detention.

14 I don't think a short period of incarceration, while
15 intellectually justifiable, is a practically prudent approach,
16 and I don't think it adds enough to recommend it. So
17 essentially I will impose the sentence on each recommended in
18 the submitted papers, which is three years of probation, six
19 months in home confinement with electronic monitoring,
20 restitution, joint and several, in the sum of
21 105-plus-thousand, and a similar order of forfeiture also
22 jointly and severally ordered.

23 I will add to it a period of, in each case, a
24 requirement of a certain number of hours of community service
25 over the three-year term of the probation.

1 So, Mr. Flynn and Mr. Grondell, if you would stand,
2 please.

3 (The defendants comply.)

4 THE COURT: I'll impose the sentence jointly since
5 it's identical on both defendants.

6 Charles [REDACTED], Steven Gro [REDACTED], on your conviction of
7 this offense and pursuant to the Sentencing Reform Act of 1984,
8 it is the judgment of the Court that you shall be and you
9 hereby are placed on probation for a term of three years. In
10 each case the first six months of your term of probation will
11 be spent in home confinement on electronic monitoring. You may
12 be responsible for the cost of the monitoring on a daily basis
13 in accordance with the costs under the probation office's
14 national contract.

15 You're each ordered to make restitution in the sum of
16 \$105,158 to the Social Security Administration. That liability
17 is joint and several. Payment of restitution shall begin
18 immediately according to a repayment schedule that can be
19 determined by the probation office and yourselves by agreement
20 with the approval of the Court, or if there is an inability to
21 agree, can be set by the Court after hearing.

22 All payments of restitution shall be made to the clerk
23 of this Court for transfer to the Social Security
24 Administration.

25 In addition, pursuant to the allegations of the

1 information and your agreement in the plea agreement, the sum
2 \$105,158 is ordered forfeited to the United States. That is,
3 again, a joint and several obligation. And I will grant the
4 government's respective motions with respect to that.

5 While you're on probation you shall comply with all
6 the standard conditions that pertain to that status. Those
7 conditions are set forth in the United States Sentencing
8 Guidelines at Section 5B1.3(c). They're now incorporated by
9 reference, but they will be set forth at length in the
10 judgment.

11 In addition to those standard conditions, you shall
12 comply with the following conditions of probation: You shall
13 not commit any other federal, state or local crime, you shall
14 not illegally possess any controlled substance. In light of
15 the information presented in the PSR as to each man, there is
16 no indication of -- a substance abuse issue, so I will suspend
17 drug testing conditions.

18 You shall submit to the collection of a DNA sample as
19 directed by the probation office.

20 You're prohibited from possessing a firearm,
21 destructive device or other dangerous weapon. It is a
22 condition of your period of probation that you pay restitution
23 in accordance with the established schedule. You're prohibited
24 from incurring new credit charges or opening additional lines
25 of credit without the approval of the probation office while

1 any of your financial obligations remain outstanding.

2 You are to provide the probation office with access to
3 any requested financial information, which information may be
4 shared with the Financial Litigation Unit of the United States
5 Attorney's Office.

6 If directed to do so, you're to participate in any
7 program for mental health counseling or treatment as you may be
8 directed to by the probation office. If you participate in any
9 such program, you may be responsible for payment of some or all
10 of the costs of the program based on your ability to pay or the
11 availability of third-party payment.

12 Each of you shall use your true name and are
13 prohibited from the use of any false identifying information
14 which includes but is not limited to aliases, false dates of
15 birth, false Social Security numbers, incorrect places of birth
16 or the like.

17 In addition to those conditions, it will be a
18 condition of your probation that over the term of your three
19 years of probation you perform, each, 105 hours of community
20 service at a rate of 35 hours per year. Essentially, one week
21 per year. It doesn't have to be performed as a week but it
22 amounts to a week.

23 Finally, I will not impose a monetary fine in light of
24 the size of both the restitution and the forfeiture. There is
25 a mandatory assessment on the conviction of \$100, which is due

1 forthwith in each case.

2 In your plea agreements respectively you have agreed
3 to limit your right to challenge or appeal the sentence. I
4 believe the sentence falls within the scope of your agreement
5 to limit your right to appeal. To the extent you have any
6 right to appeal, you must exercise the right by filing a notice
7 of appeal within 14 days of the entry of judgment.

8 And you are now directed to report directly to the
9 probation office for initial processing.

10 We'll be in recess.

11 THE CLERK: All rise for the Court. The Court will be
12 in recess.

13 (The Court exits the courtroom and the proceedings
14 adjourned at 3:00 p.m.)

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