

**UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF PUERTO RICO**

UNITED STATES OF AMERICA,
Plaintiff,

v.

CRIM. NO. 14-380 (ADC)

Manuel Acevedo Hernandez,
Defendant.

UNITED STATES' SENTENCING MEMORANDUM

TO THE HONORABLE COURT:

COMES NOW, the United States of America, by and through the undersigned attorneys, and very respectfully states and prays as follows that this Honorable Court provide defendant with a non-guideline variant sentence of 120 months of imprisonment:

“Take all the robes of all the good judges that have ever lived on the face of the earth, and they would not be large enough to cover the iniquity of one corrupt judge.”

Henry Ward Beecher

I. Procedural Background

On May 28, 2014, an Indictment was returned (ECF #3) charging Commonwealth of Puerto Rico Superior Court Judge Manuel Acevedo Hernandez (hereinafter “defendant”) with violations of Title 18, United States Code, § 371 (Count One) and Title 18, United States Code, § 666(a)(1)(B) (Count Three) for his role in a bribery scheme to acquit co-defendant Lutgardo Acevedo Lopez in a vehicular homicide case in exchange for things of value. Defendant pleaded not guilty to both charges and proceeded to a jury trial in January of this year. After several days

of jury trial, on January 20, 2015, defendant was convicted on both counts charged in the Indictment. His pretrial bond was revoked, and he has been incarcerated pending his sentencing hearing, which is now set for June 11, 2015.

II. The Presentence Investigation Report

On May 27, 2015, the United States Probation Officer filed a second Presentence Investigation Report (hereinafter "PSR") (ECF #204), which took into consideration the informal objections defendant had previously lodged. The PSR contains the following combined sentencing guideline calculation range:

GROUPED GUIDELINE CALCULATIONS PURSUANT TO § 3D1.2(b)	
Base Offense Level (BOL) - BOL from Guidelines for substantive offense -- 2C1.1(a)(1)	14
Specific Offense Characteristics (SOC) - U.S.S.G. § 2C1.1(b)(1) -- more than one bribe	+2
SOC - U.S.S.G. § 2C1.1(b)(2) -- Value of the Payment (§ 2B1.1[b][1][E]) -- more than \$70,000	+8
SOC - U.S.S.G. § 2C1.1(b)(3) -- Offense Involved Public Official in Sensitive Position	+4
Total Offense Level (TOL)	28

Since defendant had no prior criminal history points, his criminal history category is I. This provides defendant with a sentencing guideline range of 60 months for Count One, and 78 to 97 months as to Count Three. The statutory sentence as to Count One is 60 months, and as to Count Three is 120 months. The supervised release term is up to three years for both counts, pursuant to 18, United States Code, § 3583(b)(2). Defendant's fine range is \$12,500 to \$125,00, pursuant to USSG § 5E1.2(c)(3), and he must pay a special monetary assessment of \$100 (per count) pursuant to Title 18, United States Code, § 3013.

III. Defendant's Objections to Presentence Report

On May 28, 2015, defendant, through counsel of record, notified the Government of a series of objections that he intended to lodge to the PSR filed on May 27, 2015 (ECF #204).

Objection 1: 2-Point Guideline Enhancement for "More Than One Bribe"

Defendant's first objection to the PSR is that the evidence does not support a two-point enhancement pursuant to USSG § 2C1.1(b)(1) (paragraph #47, ECF #204). USSG § 2C1.1(b)(1), comment.(n.2). That enhancement applies when the offense involved more than incident of either bribery or extortion. In the case of United States v. Arshad, 239 F.3d 276,280 (2d Cir. 2001), the Court set forth three factors to be considered when determining whether multiple payments constitute a single bribe. Those factors are: (1) whether the payments were made to influence a single action; (2) whether the pattern and amount of payments bear the hallmarks of installment payments because they constitute partial payments of a fixed final sum; and (3) whether the method of payment for making each payment remains the same. Id. at 282.

In this case, utilizing the Arshad factors, the two-point enhancement should apply. Here, defendant entered an agreement to provide favorable treatment to Lutgardo Acevedo Lopez throughout the pendency of Acevedo Lopez' criminal case in the Superior Court of Aguadilla. Defendant argues that the record here favors a finding of a single bribe, because, according to defendant, the bribe payments were made to influence a single action—Acevedo Lopez' acquittal. Contrary to defendant's argument, however, an acquittal was not the scheme charged in the Indictment. (ECF #3 at 9 (stating that defendant was bribed for the "use of his official position to assist Acevedo Lopez by providing favorable treatment for Acevedo Lopez in his criminal case in the Superior Court"). A review of the trial record reveals that the multiple bribe payments were

made in exchange for favorable treatment on behalf of Acevedo Lopez throughout his criminal case, in exchange for things of value. The record demonstrated that defendant provided Acevedo Lopez with much more than simply a guaranteed trial verdict. Throughout the pendency of the case, defendant provided the defense with an insider's view to the case. Each time defendant and Roman Badillo met to: discuss the case strategy, review a diagram for the case, discuss trial strategy, a motion that should be filed, or view the accident scene, the defendant provided, through *ex parte* contacts, an uneven playing field constituting separate and distinct incidents of favorable treatment, for which Acevedo Lopez provided multiple bribe payments. Moreover, the evidence here does not show a consistent pattern of payments that are normally associated with partial payments of a fixed final sum. In this case, the evidence demonstrates that Roman Badillo's relationship with defendant blossomed throughout the timeframe of the case, and constituted no real pattern towards a fixed final sum. Here, Roman Badillo would frequently pay for social outings with defendant, including trips to restaurants and bars on the west coast of Puerto Rico. In addition, construction was done at defendant's property, a tax debt with the Puerto Rico Treasury Department was satisfied, a motorcycle was purchased for defendant, and steps were taken to provide defendant, his brother, and his nephew with employment opportunities. These considerable things of value did not constitute partial payments in fulfillment of an agreed upon fixed sum, but instead constituted a series of bribes in exchange for multiple instances of favorable treatment. Indeed, as the payments were made, defendant engaged in multiple instances of inappropriate *ex parte* contacts and other favorable treatment for Acevedo Lopez as the case progressed. Finally, weighing against a finding of a single bribe, is the fact that the methods and

means of payment for the bribes paid to defendant varied throughout the conspiracy. Arshad, 239 F.3d at 282.

Objection 2: Value of the Bribe in Excess of \$70,000

Defendant's second objection to the PSR is that the value of the payment, benefit received or to be received exceeded \$70,000. This objection should be rejected. The trial testimony and summary of expenses prepared by Roman Badillo provided a total estimated amount of approximately \$63,380 (Gov't Ex. 89). Much of this chart was corroborated through checks and banking information, receipts from various business establishments, recorded conversations, photographs introduced at trial, as well as recorded conversations. Additionally, the evidence clearly established that defendant sought a position on the Court of Appeals for the Commonwealth of Puerto Rico. Had he been successful in this endeavor, his salary would have increased annually by \$15,400 for approximately 6 years (until the mandatory retirement age of 70), which would have provided a total profit of \$92,400. The loss therefore, is easily in excess of \$70,000 (and in excess of \$120,000 as well), and does not even contemplate any potential or intended benefit for the employment that was sought on behalf of defendant's brother (Saul) or nephew (Miguel).

Objection 3: Four-Level Increase For a Sensitive Position

Without citing case law on point, either for or against his position, defendant claims that the 4 level increase pursuant to USSG § 2C1.1(b)(3) for a sensitive position is impermissible double counting as USSG § 2C1.1 (a)(1) already takes into account the position held by defendant. Unfortunately for defendant this argument has been considered by courts and summarily dismissed as incorrect.

In a case directly on point, United States v. Barraza, 655 F.3d 375 (5th Cir. 2011), the Fifth Circuit Court of Appeals made short shrift of an identical argument raised by appellant. There, as here, the defendant was a state court judge; accordingly, his base offense level was 14 pursuant to USSG § 2C1.1(a)(1). The court in Barraza also applied the four-level enhancement pursuant to Section 2C1.1(b)(3) for crimes involving an elected public official or any public official in a high-level decision making or sensitive position. Appellant argued, as defendant does here, that the application of both guidelines was impermissible double counting. In rejecting the argument, the court held:

[w]e have previously noted that double counting is prohibited only if the particular guidelines at issue specifically forbid it.” Here, the Guidelines directly contemplate this form of double-counting. We interpret Barraza’s argument to be that the Guidelines intended the specific offense characteristic to apply to those who bribed high-level officials and not to those who were high-level officials, but that double standard is not supported by the text. The Guidelines do not limit the application of this specific offense characteristic. The commentary explains that the four-level enhancement should be applied if the payment was for the purpose of influencing an official act by certain officials. Here, the payment Barraza solicited was for the purpose of influencing the way he handled a criminal case in his capacity as an elected state judge. The district court properly applied the specific offense characteristic.

Id. at 384 (internal citations and quotation marks omitted). The same argument carries the day in the case at bar.

In addition, the commentary to Section 2C1.1 makes clear that Section 2C1.1(b)(3) applies to judge-defendants. See USSG § 2C1.1 comment. (n.4(B)) (“Examples of public officials in a high-level decision-making position include a prosecuting attorney, a judge, an agency administrator, and any other public official with a similar level of authority . . .”). Accordingly, the four-level enhancement properly applies.

Objection 4: General Objections as to Footnotes

Defendant's next objection is a general objection to the style and form utilized by the United States Probation Officer in handling a series of initial, informal objections lodged by defendant on May 21, 2015.¹ These were a total of 32 objections mainly setting forth defendant's interpretation of the trial evidence. In handling these objections, the USPO decided that where defendant's objections were well founded, the objection was incorporated into the second PSR. However, where the USPO decided that the objections were not supported by record of the case, the USPO placed defendant's verbatim objection in a corresponding footnote in the second PSR. The United States has no issue with the manner in which the USPO decided to handle defendant's objections to the original PSR. In fact, to the contrary, we would argue that the USPO acted quite responsibly by incorporating defendant's specific, informal objections into the second PSR. The United States will, of course, be prepared to discuss each of the remaining objections at the sentencing hearing on June 11, 2015.

Objection 5: Offense Conduct, Item 33

Defendant alleges that paragraph 33 of the second PSR should be eliminated. The United States has no objection to defendant's request.

IV. Title 18, United States Code § 3553 Factors

Title 18, United States Code, Section 3553(a), identifies the factors that must be considered in imposing sentence. In support of our sentencing recommendation, we highlight the following:

- (1) the nature and circumstances of the offense and the history and characteristics of the defendant;
- (2) the need for the sentence imposed—

¹ The United States does not believe that defendant's initial objections were forwarded to the Government. The objections were received by the United States on the day after the filing of the second PSR.

- (A) to reflect the seriousness of the offense, to promote respect for the law, and to provide just punishment for the offense;
- (B) to afford adequate deterrence to criminal conduct; . . .
- (3) the kinds of sentences available;
- (4) the kinds of sentence and the sentencing range established for–
 - (A) the applicable category of offense committed by the applicable category of defendant as set forth in the [U.S. Sentencing Guidelines . . .
 - . . .

18 U.S.C. § 3553(a).

1. The Nature and Circumstances of the Offenses

Defendant Manuel Acevedo Hernandez engaged in a sustained pattern of corrupt conduct, where he sold an acquittal in a vehicular homicide case for favors and financial gain, while holding one of the most significant leadership positions in Puerto Rico. As a sitting judge, defendant solicited and accepted monies in exchange for favorable judicial treatment. He violated the public’s trust in its public servants, and made a mockery of the judicial process. This conduct seriously undermines the public’s trust and confidence in its public officials, and undermines the integrity of our judicial system. The seriousness of his conduct warrants the imposition of terms of imprisonment consistent with the seriousness of his offenses. A different result would be contrary to the interests of justice and would encourage others to similarly flout of the law.

Instead of honoring the oath he took to uphold the laws of the United States and the Commonwealth of Puerto Rico, defendant sold his services and defrauded the citizens he swore to represent. Defendant’s criminal offenses constitute blatant and repeated violations of the public trust, warranting the imposition of a term of incarceration as contemplated by the law.

2. **The History and Characteristics of the Defendant**

Defendant will likely argue that his family life and his years of public service warrant the imposition of prison sentences significantly below the applicable Guideline range. While relevant, such claims cannot outweigh the great public disservice, violations of the public trust, and utter disregard to the rule of law committed and displayed by defendant and, thus, do not warrant a downward departure or variance or under § 3553(a)(1). Moreover, rather than a mitigating factor, defendant's public service should be viewed as an aggravating factor because he abused the public trust and used his public office for personal gain.

3. **The Need for the Sentence Imposed**

A prison sentence for defendant consistent with the United States' recommendation is absolutely essential to accomplish the relevant purposes of U.S.S.G. § 3553(a)(2),; that is: "(A) to reflect the seriousness of the offense, to promote respect for the law, and to provide just punishment for the offense; [and] (B) to afford adequate deterrence to criminal conduct[.]" Through the commission of this crime, defendant held a position of power within the Puerto Rico Judiciary, and betrayed the public trust for personal profit. The proposed punishment in this case, which includes a term of incarceration as prescribed by the applicable law, fits his crimes.

The proposed variant sentence of incarceration would send a strong message to all current and future government officials and employees that corruption and violations of the public trust will not be tolerated. *E.g., United States v. Anderson*, 517 F.3d 953, 996-97 (7th Cir. 2008) (highlighting need for general deterrence in public corruption prosecutions).

4. **The Kinds of Sentences Available and the Applicable Advisory Sentencing Guidelines range**

The bribery of public officials statute, Title 18, United States Code, § 666, imposes a

maximum sentence of ten years in prison and a \$250,000 fine. The applicable guideline range for defendant is 78 to 97 months imprisonment.

V. United States Sentencing Recommendation

In order to properly put into context the far reaching ramifications of defendant's crime, we think it is only proper to quote a fellow judge of defendant's, who stated, "... the negative impact defendant's actions had upon the image of the court went far beyond Aguadilla Superior Court."

The United States submits that pursuant to 18, United States Code, § 3553, a non-guideline variant sentence of 120 months of imprisonment, a SRT of 3 years, and a fine within the applicable guideline range, is the appropriate sentence in this egregious case of judicial corruption.

RESPECTFULLY SUBMITTED.

In San Juan, Puerto Rico, this 8th day of June, 2015.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this same date, this motion was electronically filed with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to defense counsels.

S/Timothy R. Henwood
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USDC No. 218608