

STATE OF NEW JERSEY v. MARIO ROSAS DELAVEGA ROCHA
February 8, 2019

Sheet 1

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION, CRIMINAL PART
UNION COUNTY
INDICTMENT NO. 18-09-00522-I
COMPLAINT NO. W2018-001969-2004
APP. DIV. NO.

STATE OF NEW JERSEY,)	
)	
Plaintiff,)	TRANSCRIPT
)	of
vs.)	SENTENCE
)	
MARIO ROSAS DELAVEGA)	
ROCHA,)	
)	
Defendant.)	

Place: Union County Courthouse
2 Broad Street
Elizabeth, NJ 07207

Date: February 8, 2019

BEFORE:

HONORABLE DANIEL R. LINDEMANN, J.S.C.

TRANSCRIPT ORDERED BY:

PETER W. TILL, ESQ. (Law Offices of Peter W. Till,
105 Morris Avenue, Suite 201, Springfield, New
Jersey 07081)

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Sheet 2

APPEARANCES:

DEREK T. NECECKAS, ESQ. (Union County Prosecutor's Office)
Attorney for the State
PETER W. TILL, ESQ. (Law Offices of Peter W. Till)
Attorney for the Defendant
LOUIS J. KELEHER, ESQ. (Law Offices of Peter W. Till)
Attorney for the Defendant

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Sheet 3

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Colloquy

1 THE COURT: Ro-- ROSAS DELAVEGA ROCHA. And
2 can we find Mr. Bjelopoljak so we can get rolling on
3 the other --
4 UNIDENTIFIED: I'll grab him, Your Honor.
5 THE COURT: -- interpreter case, please.
6 UNIDENTIFIED: (indiscernible)
7 THE COURT: We're -- we're going to that one
8 next, right after this. Thank you. Didn't I call the
9 case?
10 THE CLERK: Yes. Counsel?
11 THE COURT: Counsel, come on up, please.
12 UNIDENTIFIED: All right.
13 THE COURT: STATE VS. MARIO RO-- ROSAS
14 DELAVEGA ROCHA. This is 18-09-522. We're doing a
15 sentencing, please. Can I have appearances, please?
16 MR. NECECKAS: Derek Nececkas, for the State,
17 Your Honor.
18 THE COURT: Thank you.
19 MR. TILL: Judge, (indiscernible) good
20 morning. Peter Till, appearing with (indiscernible)
21 THE COURT: Nice to see you, counsel.
22 MR. KELEHER: -- with Louis Keleher.
23 THE COURT: Nice to see you, sir. And can I
24 please have the interpreter --
25 UNIDENTIFIED: (indiscernible)

5

Colloquy

1 THE COURT: Are you set? Can we swear in the
2 interpreter, please?
3 UNKNOWN SPANISH INTERPRETER, SWORN
4 THE CLERK: Please state your name.
5 THE INTERPRETER: (indiscernible) Spanish
6 interpreter.
7 THE CLERK: Thank you.
8 THE COURT: All right, on this matter, the
9 defendant presents having pled guilty to a second-
10 degree theft. Does he stand on his plea, counsel?
11 MR. TILL: Yes, we are, Judge.
12 THE COURT: And is there anything with
13 respect to the PSI report that you wish to change, or
14 add, or supplement?
15 MR. TILL: We -- we do not, Judge. We
16 submitted a presentence re -- memorandum to the Court.
17 That would be the only addition to the record.
18 THE COURT: I'm sure that's the case. I
19 don't know that I have it. May I -- is it possible to
20 -- to get a copy?
21 MR. TILL: Sure.
22 THE COURT: We can copy it right now, if --
23 as long as it's not a work product written on --
24 MR. TILL: No, no. It's actually
25 (indiscernible)

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Sheet 4

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Colloquy

1 THE COURT: All right. Thank you.
2 MR. TILL: Judge, I'm passing up to the Court
3 (indiscernible)
4 THE COURT: Yeah, just --
5 MR. TILL: We sent it to Your Honor certified
6 mail return --
7 THE COURT: No, I'm sure you did. It's --
8 MR. TILL: Oh, no, I just --
9 THE COURT: -- some-- sometimes all the dots
10 don't get connected. This is the one time that's
11 happening, so. It's the one time it's happening,
12 counsel.
13 MR. TILL: All right. That's okay.
14 THE COURT: I'm sorry that it's your case
15 that it's the one time it's happening. Yes.
16 THE CLERK: (indiscernible)
17 THE COURT: I'm just going to see if my law
18 clerk has it. Just, if you feel like you didn't send
19 it to begin with, I just want to make sure
20 (indiscernible)
21 (Off the record. Back on the record.)
22 THE CLERK: We're back on the record, Judge.
23 THE COURT: Thank you. All right. We're
24 back on the record. Miss Callahan, did you get a copy
25 of the brie-- coun-- counsel, did you get a copy of the

7

Argument - Till

1 brief for this one?
2 MR. NECECKAS: I did, Judge, yes.
3 THE COURT: All right. So, I apologize. I
4 did have it. I have looked at it. So, counsel, I
5 appreciate your submission of the brief.
6 It was excellent-- excellently prepared.
7 Very unusual to get something so well done on a matter
8 like this and I really appreciate the -- the attention
9 you put to this file.
10 This is a lawyer who really is demonstrating
11 every way possible how much he's committed to helping
12 his client. Everyone does, but this is -- I -- I
13 especially want to note that for you, sir.
14 The -- I have your brief. Do you wish to
15 accent or highlight anything that's mentioned in your
16 brief, counsel?
17 MR. TILL: If -- if I could, Judge, please.
18 Mr. Keleher and I have worked very hard at the
19 representation of Mr. Rosas (sic), as we do with
20 (indiscernible) all of our clients.
21 This case came to our office through one of
22 the agencies here in New Jersey called Make the Road.
23 Make the Road is an agency that -- that deals
24 with and assists immigrants. My parents were
25 immigrants and many years later there's obviously a new

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Argument - Till

1 wave and another wave of immigrants.

2 Mr. Rosas finds himself in a very tough
3 position today because he's broken the law. He
4 acknowledged that to you. He was clear with everybody
5 about -- about that.

6 In our memo, we go ahead and indicate to the
7 Court and try to communicate to the Court a sense of
8 desperation which results in a rotten lack of judgment
9 by -- by Mr. Rosas.

10 I submit to the Court that he's not unlike
11 many other people who have a -- a moment of bad
12 judgment. But it's clear that -- he's been to our
13 office any number of times, his family has been
14 there -- he's been reliable, he's never been late to
15 court.

16 The plea ought to be honored.

17 Now, going -- going to -- specifically
18 further. I've already indicated to the Court that
19 everything in the presentence -- presentence memorandum
20 is fine. We wanted to make the -- this memorandum a
21 part of the record.

22 But if I could direct the Court to Page 10 of
23 our memorandum, getting to the point, as they say.

24 THE COURT: Thank you.

25 MR. TILL: All right? The issue here is

9

Argument - Till

1 whether or not the Mitigating Factors outweigh the
2 Aggravating Factors. And specifically at Page 10, the
3 second full paragraph that begins in this case, it says
4 as follows:

5 Mitigating Factors 1 are defendant's conduct
6 neither caused nor threatened serious harm.

7 Mitigating Factor 2 is applicable, defendant
8 did not contemplate that his conduct would cause or
9 threaten serious harm.

10 Five, victim of defendant's -- I'm sorry,
11 that does not apply, victim of defendant's conduct
12 induced his commission.

13 Six advised that the defendant has
14 compensated or will compensate the victim of his
15 conduct for the damage or the injury that he sustained.

16 Seven applies, no prior criminal history.

17 Eight applies, conduct is unlikely to recur.

18 Nine, defendant is unlikely to commit another
19 offense.

20 Ten, the defendant's particularly likely to
21 respond affirmatively to probationary treatment.

22 And, 11 applies with regard to hardship
23 matters.

24 The only Aggravating Factor which -- which we
25 would intellectually and honestly offer to the Court is

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Sheet 6

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Argument - Till

1 Aggravating Factor 9, need for deterrence.

2 Now, it's clear that at the top of that page,
3 we cite the STATE VS. TANCO-BRITO case. And, then, on
4 the prior page, Page 9, we go ahead and we cite the
5 Court to MEGARGEL and CORSO.

6 In both of those cases, those cases were
7 taken up on appeal. In both of those cases, the trial
8 court exercised its discretion to go below -- to go
9 below the plea that was presented.

10 Now, the plea that's before Your Honor and
11 the sentence that was negotiated is 3 years flat. That
12 is at the bottom of the third-degree ran-- third-degree
13 range. We submit to the Court that the Court would not
14 be abusing its discretion if the Court went to fourth-
15 degree -- fourth-degree sentencing.

16 Now, on the fourth-- fourth-degree
17 sentencing, there would be a substantially lesser,
18 lesser sentence. And we submit to the Court that the
19 Court can do that.

20 But the Court can also go ahead and cert--
21 certainly do its own balancing of Mitigating vs.
22 Aggravating and come -- come to a different conclusion.

23 But this is our sole argument today. By no
24 means (indiscernible) do we, and you asked quite
25 directly at the beginning are we standing by the plea.

11

Argument - Till / Nececkas / Statement - Defendant

1 Yes, we are. But we think the jurisprudence allows us
2 to make the argument to you -- make the argument to you
3 that the Mitigating Factors go ahead and outweigh the
4 Aggravating Factors.

5 In fact, the Appellate Division between the
6 MEGARGEL case goes ahead and says, as Your Honor knows
7 and does every single week or day of the week, there
8 has to be a Mit-- Mitigating vs. Aggravating Factors
9 analysis in order for the sentence to be legally
10 binding and legally sufficient.

11 So, I'm suggesting to the Court that the
12 Court do that analysis and that the Court, obviously
13 from my advocacy position, agree with us -- and I don't
14 say that tongue in cheek -- but agree with us that
15 there can be a -- a lesser sentence that Mr. Rosas
16 could receive and properly so.

17 There's an issue of restitution. Restitution
18 that was stipulated to was \$35,000. Mr. Rosas and his
19 family are making arrangements and trying to get that
20 done as quickly as possible after this -- after this
21 sentencing.

22 Mr. Rosas is clearly prepared, Judge, to go
23 to jail today. He's been -- we've been very clear with
24 him about that. He fully accepts responsibility. He's
25 a -- he's a decent man. He has stood up and accepted

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Argument - Till / Nececkas / Statement - Defendant
his responsibility.

And I submit to the Court that it would not be -- it would not be a deviation for this court to consider and possibly lower the time from the 36 months that he has stipulated to -- excuse me, not stipulated to, but what has been agreed to, and the Court could -- could go lower.

And I think if Your Honor has a moment, I think Mr. Rosas would like to address the Court, as well.

THE COURT: Thank you, counsel. The -- it -- it's certainly invited for -- for your client to address the Court, if he wishes to do so. Sir?

THE DEFENDANT: Good morning, Your Honor. I am really grateful for my lawyer's (indiscernible), for the great job that he's done for me.

I repent a lot for what I've done. And I ask society and my family for forgiveness. And I'm willing to receive my sentence and go to prison. That's it.

THE COURT: Thank you, sir. Does the State wish to be heard on sentencing?

MR. NECECKAS: Very briefly, Judge. The State would simply ask Your Honor to impose the sentence as negotiated.

It -- it's the State's opinion that it was

13

Argument - Nececkas
fairly negotiated. In fact, I know that counsel negotiated this, quite frankly, very intensely with me.

This reflects our pre-indictment offer, which I actually left open until after indictment in order for us to work out any issues surrounding the case. And counsel and the defendant immediately accepted that offer at the -- at the first opportunity post-indictment.

You know, just a matter, a description in terms of seriousness: although this certainly, I think, is a mistake on the defendant's part, it was not a one-time mistake; this is a series of thefts that extended over multiple years, month after month, day after day, stealing from his employer until the figures amounted to, quite frankly, quite a large number.

It is not possible to determine the number exactly, but it's -- it -- it appears to be in excess of \$300,000 at the end of the day.

So, this is an extend -- this is not a one-time mistake. This is an extended course of conduct on the part of the defendant here.

So, I think that certainly there is a need to deter, a serious need to deter.

And the other thing, in terms of departing from the negotiated plea, I would note to Your Honor

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Sheet 8

14

Argument - Nececkas / Till

1 that the defendant did not plead guilty to a third-
2 degree. In fact, he pled guilty to a second-degree in
3 which we agreed to treat as a third for sentencing
4 purposes.

5 So, the presumption of incarceration does
6 apply here. And at the same time, there is no
7 provision that I'm aware of in the code to treat a
8 second-degree as a fourth-degree for the purposes of
9 sentencing.

10 MR. TILL: If I could just -- I'm sorry.

11 THE COURT: No --

12 MR. TILL: -- if --

13 THE COURT: -- we're -- I'll --

14 MR. TILL: -- if I -- if I could just
15 respond. The jurisprudence says otherwise. The Court
16 still has discussion.

17 Despite the fact that the legislature goes
18 ahead and -- and draws up the statutes, the Court is
19 not without its discretion in the -- in this cir--, you
20 know, in the circumstances.

21 This is not an extraordinary case, though,
22 Judge. It's not an extraordinary case.

23 And by the way, counsel's quite correct, the
24 prosecutor's office did not -- really was not able to
25 collect the kind of verifiable information on loss that

15

Argument - Till / Nececkas

1 -- that it would have liked to. And that's why
2 restitution ended up at \$35,000.

3 And I don't want to deprecate or minimize any
4 of that. Mr. Rosas is here and knows he -- he's going
5 to go to jail.

6 If the Court were to sentence Mr. Rosas to
7 something less than the 36 months, for example, 18
8 months is the fourth-degree, or the Court could go
9 anywhere from between -- anywhere down from 36 months
10 and still be in line with the second-degree plea to be
11 treated like a third. And I think the Court has ample
12 -- ample basis.

13 As far as course of -- course of conduct is
14 concerned, it's clear that Mr. Rosas has taken
15 responsibility for that. You know, desperate times
16 call for desperate measures, maybe. But he made the
17 wrong decision and we're not backing away from that,
18 not for (indiscernible).

19 THE COURT: Thank you. Anything further,
20 counsel?

21 MR. NECECKAS: No, Judge. I just should say,
22 as to the restitution value, the restitution value is
23 something that we did negotiate as part of the plea.
24 And certainly in negotiating that, I think the State
25 had greatly in mind coming to a number that there was

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Sheet 9

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Argument - Nececkas

1 some ability to pay. There was a recognition that
2 probably the defendant was not going to be -- be able
3 to ever pay back the whole amount.
4 So, we came to something we thought was
5 appropriate and also possible. So, that -- that is,
6 you know, I -- I guess what reflects the restitution
7 value we settled on, which is the 35,000.
8 MR. TILL: And, Judge, Mr. Keleher just
9 brought to my attention that I misspoke. I was saying
10 35,000. It is \$30,000.
11 MR. NECECKAS: I have 35.
12 MR. TILL: (indiscernible) No? Okay
13 Wait -- wait, it says it on the plea document, Judge.
14 (indiscernible)
15 THE COURT: Counsel for the State, do you
16 want to clarify what the restitution is, please?
17 MR. NECECKAS: Judge, I have 35,000. I will
18 look in my copy of the plea forms to make sure that
19 that was --
20 MR. TILL: I can vouch for it, Judge.
21 MR. NECECKAS: -- actually --
22 MR. TILL: (indiscernible)
23 MR. NECECKAS: -- executed. Yes, Judge, the
24 plea forms say 35,000.
25 THE COURT: And --

17

Colloquy

1 MR. TILL: We stand by that, Judge.
2 THE COURT: -- and where does it say that,
3 counsel?
4 MR. NECECKAS: Oh, I'm sorry. It's, let me
5 go back to it, one moment. What did I do -- that is
6 Paragraph 21, Judge.
7 MR. TILL: And, Judge, it also appears on
8 Page 1 of the presentence -- adult presentence report,
9 lefthand side of the page.
10 THE COURT: All right. Well, the presentence
11 report is the first -- first inquiry after we stand on
12 our plea to make sure there weren't mistakes made.
13 The plea form it-- the plea form itself is
14 what is part of the discussion and the testimony when
15 we accept the -- the plea.
16 So, the -- the -- the most -- the most
17 controlling document is the plea doc-- plea document,
18 Paragraph 21, which is Page 6, that it -- that
19 indicates I agree to pay restitution in the amount of
20 \$35,000.
21 So, typically and most of the time, PSI's are
22 accurate. That's why we always inquire to make sure
23 there aren't any changes. But the plea -- the PSI also
24 indicates \$35,000 on Page 1.
25 All right, that said, everything was very

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Sheet 10

18

Colloquy

1 well presented, the brief and the arguments were
2 excellent by the defense and the State's position was
3 fully reinforced through its arguments.

4 This is a matter in which a, the gentleman
5 here, 42 years old, this is his first indictable
6 offense. But as a first indictable offense, pleading
7 guilty to a second-degree theft, the maximum time under
8 the statute is 10 years in jail, \$150,000 fine, \$50
9 VCCO.

10 The plea form was -- was prepared and
11 accepted by the Court. I -- I did it myself on
12 November 5th, 2018. And we went through all the -- all
13 the appropriate inquiry.

14 And the Court accepted the testimony that --
15 and -- and it -- it's -- it -- the testimony from the
16 factual basis is -- is what it is and it fully supports
17 the plea.

18 I -- I won't belabor it by going through it,
19 because I always write it on the back and I happen to
20 have it in front of me. It's not usual that I actually
21 see it come back to me, but I have the -- I wrote my
22 notes from the factual basis and I have it in front of
23 me.

24 But, it's fully supported. The defense
25 argues for Mitigating 6, 7, 8, 9, 10, and 11 and -- and

19

Colloquy

1 accepts Aggravating Factor 9.

2 As to Mitigating 6, it's not enough to say
3 you're going to pay back to get a strong finding of
4 Mitigating 6. I accept he has an intention to be bound
5 by a commitment for Mitigating Factors, so I'll find
6 Mitigating Factor 6 slightly.

7 But, Mitigating Factor 6, when it's a second-
8 degree theft, means you've already paid it back or
9 you've already started to pay it back, which hasn't
10 happened at all yet.

11 It's a plan. I accept it's going to happen
12 and that he's made a firm commitment to be involved
13 with full-- fully paying it back to the best of his
14 ability.

15 And I also accept the State's position that
16 the \$35,000 restitution wasn't a dart thrown at the
17 wall to see what number, and it wasn't necessarily a
18 reflection of lack of proofs, it was part of a
19 compromise under which an ability to pay was a -- was a
20 part of the factors.

21 I can't comment on what significance it was,
22 but I accept from the State that it was part of the --
23 it was part of the analysis in determining the \$35,000
24 number was ability to pay;

25 Which we know under PASQUALE VS. PASQUALE, a

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Sheet 11

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Colloquy

1 family case, that when we set child support recovery
2 from unpaying (sic) responsible parents, ability to pay
3 is the driving component. And an inquiry as to that
4 has to be made any time it's a responsible commitment,
5 first, that's going to be enforceable with risks of
6 incarceration.

7 That's a family case, not applicable here,
8 but it drives back the point of ability to pay. And
9 that I accept was part of the -- part of the analysis
10 by the State.

11 So it was a, to some extent, a compromise
12 amount that could have been higher, but the State
13 accepted based on the commitment.

14 Certainly it's going to be hard to pay back
15 \$35,000, but violating the law and having justice
16 consequences interrupts your life. And it's not
17 supposed to be designed to be comfortable, because it's
18 called a consequence, not a birthday party.

19 So, I find some Factor, Mitigating 6, but not
20 a very strong one.

21 No. 7 I find very strong. Here he has no
22 prior history.

23 No. 8, I accept that this is the kind of
24 circumstance that isn't going to recur, but looking at
25 the PSI, this is, you know, the PSI doesn't demonstrate

21

Colloquy

1 a "yes I did it" and it's -- that's as -- that's as
2 simple as the PSI paragraph.

3 The statement of the defendant is two pages.
4 It starts with I was beat -- I was beat up at the gas
5 station, I was locked in the room, my boss refused to
6 give me medical insurance, he told me to take Tylenol.
7 Where's the part where you just stand up and say I did
8 it?

9 It took a little while to get to that point,
10 but he ultimately does.

11 Then it comes into my therapy for why I -- my
12 therapy coming from the being beat up and maybe also
13 linking in my boss wouldn't give me overtime, my boss
14 wouldn't give me medical insurance, was to say my
15 therapy was to go to casinos.

16 Well, I don't need someone to say casinos and
17 a possible \$300,000 debt, and I can't guess on what the
18 connection between those two might be. A problem, a
19 debt that needs to be repaid, and going to the place
20 most easily available to find a way to pay back debts.

21 It's not in the record, but casinos come from
22 his own statement. And the \$300,000 debt comes from
23 verified, certified information from his employer, BP,
24 not a small institution:

25 A large company that has forensic accountants

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Sheet 12

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Colloquy

1 available, who spent some time evaluating what the loss
2 was, really hard to do it exactly because you weren't
3 there to see every dollar when it was taken. But the
4 estimates were as much as \$300,000.

5 This is Mitigating Factor 8, is it likely to
6 recur again. I expect 8 has some strength, but truth
7 is in the future. What does he do when he has the
8 chance. And we'll get to that in a second.

9 No. 9, the character and attitude of
10 defendant indicate he's unlikely to commit another
11 offense. Well, I guess so, when he's guided by his
12 lawyers and told focus it down to saying I'm sorry and
13 I did it, which is what he's doing today. That's not
14 what he did with Probation.

15 It's a long narrative to get to the point of
16 where we are, okay, I'm pleading guilty. You can't.
17 You -- it -- it -- it -- this isn't about justifying
18 it. You did it or you didn't do it.

19 And it's a second-degree that you pled guilty
20 to. And a second-degree means 5 years to 10 years of
21 going to jail. A first-degree is 10 to 20. A third-
22 degree is 3 to 5.

23 The plea agreement here is the bottom number
24 of a third-- third-degree, when you pled guilty to a
25 second-degree. That is a compromise that's offered by

23

Colloquy

1 the State.

2 There's a statute that controls. If the --
3 if the State hadn't accepted that, hadn't recommended
4 that, there's a statute that's available that requires
5 the Court, under 2C:44-1, to say in its findings that
6 I'm clearly convinced that the Mitigating Factors
7 substantially outweigh the Aggravating Factors and the
8 interest of justice demands.

9 So, I see some evidence of 6. I see strong 7
10 Mitigating, as I've indicated. I see some 8. I see
11 and hope that 9 is -- is present.

12 So, there's some 6, there's some 8, and
13 there's some 9. Seven is very strong.

14 I can't find 10, because this is not a
15 sentence for probation. The plea bargain was for jail,
16 not for probation. If the State thought he was a fit
17 person for probation, it could easily have reduced it
18 down to whatever it thought was appropriate.

19 But the consequence here in the plea is to
20 treat a second-degree as a third-degree, which is a
21 very unusual moment in a sentencing of people, to have
22 that opportunity, notwithstanding the fact that the
23 statute would allow the Court to do so for -- in the
24 interest of justice.

25 Back on Aggravating Factors, I don't find 10

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Sheet 13

24

Colloquy

1 here. I hope the proof -- that the proof is in the
2 pudding. I hope that the future proves that he's a
3 viable probationary candidate. But let's finish with
4 the sentencing and see if probation is something that
5 we need to talk about any further.

6 No. 11, it's going to be excessive hardship.
7 Yeah. I -- I don't see how it's -- I don't see how
8 it's demonstrated as being more unusual than it is for
9 anyone. And that's not to be curt.

10 Going to jail interrupts your life.
11 Violating the law interrupts other people's lives.
12 Stealing from the employer who trusted you, even with
13 cameras around you, and you don't know there's cameras,
14 in this day and age?

15 That is a breach of a wholly fiduciary
16 obligation. Your boss literally gives you the keys to
17 the store. And you ro -- and you take money.

18 You're not pleased with how they're treating
19 you? Go find another job. You're not getting medical
20 insurance, take appropriate remedies for that,
21 including go find another job. Go be a loyal employee
22 at Mer -- at -- at -- at a different place where
23 medical insurance is an available benefit.

24 But you don't get back at the boss because
25 they didn't do what you wanted by stealing. It's a

25

Colloquy

1 betrayal. And, sir, you're going to have a hard time
2 in the future getting a new job because your record, if
3 it gets explored by future employers, is going to
4 include:

5 Because you're a contrite person, I accept
6 that, you're an honest person now, I accept that, and
7 you're going to be a responsible person now, going
8 forward, so at your next job interview for a job,
9 you're going to reveal this history.

10 And see if an employer's ever going to trust
11 you near a keyless door or near the -- near -- near the
12 cash register, much less in a gas station where it's
13 all of our typical experience, I can't say that's the --
14 -- what happened here, the typical experience is:

15 All the big bills are in the right pant --
16 right pants pocket of the gas attendant and all the
17 small bills are in the left pocket of the gas
18 attendant, who frequently goes to the safe, he doesn't
19 keep it in his pocket, to secure against theft and bad
20 things that happen late at night because you're working
21 at the gas station.

22 It goes into the safe. It doesn't go into
23 the shoe box that you take home. That's a betrayal of
24 trust. This day and age, where jobs are so hard to
25 find, where your family needed you, and you betray the

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Sheet 14

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Colloquy

1 boss rather than go find a different job. You don't
2 stay where the terms aren't what you like, and use and
3 abuse and betray so that you can get what you wanted;
4 even though they wouldn't give it to you, you were
5 going to take it anyway. That's not how society
6 operates.

7 So, what happened here is what we need to
8 address, the circumstances. When we want to say
9 interest of justice, that's outside the box sentencing.
10 What do I see in the big picture. What's going on. Am
11 I motivated to say throw the plea out the window and
12 this would be much more fair. That's not happening
13 here.

14 It's enough for me to say as a finding that
15 I'm clearly and convince -- I'm clearly convinced and
16 substantial -- that the Mitigating Factors do outweigh
17 substantially the Aggravating Factors.

18 And interest of justice requires and demands
19 that I sentence in accordance with the plea agreement.
20 This court doesn't just rubber stamp pleas where it's a
21 plea to a second and we're going to treat it as a
22 third. The statute gives the Court that right, also.

23 So every time I see that plea, I look at the
24 statute and I say does it independently stand that way
25 as I see it, or am I just doing it because it's a plea

27

Colloquy

1 agreement.

2 Here, I'm doing it as a plea agreement and I
3 also find that the factors justify reducing the 5 to 10
4 to a 3 to 5. But going further than that I will not
5 do. And the factors clear -- do not support it at all.
6 The factors support the second-degree being treated as
7 a third-degree and that's it.

8 Now, now that we're at a third-degree, the
9 choice is should it be 3 to 5. Well, going along with
10 the plea agreement, it's 3, not 5, not 4, not a crooked
11 number between 3, 4, and 5 of some -- some number of
12 months.

13 It's 3 because that's the plea agreement.
14 And I find that it's supported. And I'm going to go
15 along with the plea agreement, even though -- even
16 though there's more exposure that's revealed.

17 But because I find the Mitigating Factors, as
18 I've indicated, I'm clearly convinced that the
19 Mitigating Factors substantially outweigh the
20 Aggravating and interest of justice demands.

21 And the, just to be clear, the Aggravating
22 Factor is 9 and that's what you need to be guided by,
23 sir. We don't break the law and expect not to be
24 punished.

25 Society doesn't want to think that laws don't

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Sheet 15

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Sentence

1 have a consequence. You either respect the law or you
2 fear the law. Either way, you don't violate the law.
3 You've got heads and tails on a coin. Whichever comes
4 up, it's 25 cents for a quarter. You respect the law
5 and you don't violate it, or you fear the consequences.
6 Society needs to know that people get
7 punished for violating. And people who might be
8 similarly situated to you need to say:
9 I'd better not do that because I don't want
10 my life to be interrupted. I don't want to have to pay
11 back money. I don't want to go to jail or risk going
12 to jail, because I don't want that to happen to me, so,
13 therefore, I'm not going to violate the law.
14 All of those things are Aggravating Factor 9
15 and it is present here. But as I indicated in my
16 findings, I'm not going to repeat it. Nine is all
17 that's Aggravating and I've listed my reasons for
18 Mitigating.
19 And I've made my 2C:44-1 findings with
20 respect to why I believe the record is supporting the
21 second-degree being treated as a third-degree and why
22 I'm going to go along, not simply for its own sake, but
23 I'm going along with the 3 years, not 3 to 5, but 3,
24 because:
25 It's req-- it's the plea agreement that was a

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Sentence

1 bargain between the parties, accepted with the Court's
2 own inquiry and accepting of the factual basis. And I
3 just need you, sir, to leave here understanding that
4 today is a day of change. Everything that I've said
5 you never have to hear again if you change.
6 You've dusted your family because they can't
7 count on you. And you want to call it a hardship to
8 them. Well, you shouldn't have broke the law.
9 I can't not sentence people because it's
10 going to be a hardship. Everyone's life gets impacted.
11 And I don't see the extreme hardship here that would
12 justify a -- a Mitigating Factor 11, excessive
13 hardship. I don't find it for the reasons I've
14 indicated.
15 So, for all those reasons, I'm going along
16 with the -- the plea agreement. And I've also made
17 independent findings that support the plea agreement.
18 And, sir, you're going to be sentenced. You
19 pled guilty to second-degree, you're being treated as a
20 third-degree. And my sentence for the reasons
21 previously indicated is:
22 Three years New Jersey State Prison.
23 Restitution shall be \$35,000, not a penny less. Your
24 obligation is to do that. And until you pay that back,
25 you owe money. Unless someone wants to discount it for

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Sheet 16

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Sentence

1 you and renegotiate it for you, that's the amount. And
2 pay-- payment plans can be negotiated. No one wants to
3 take more than you can give.
4 But you need to come up with a plan on how
5 that's going to be paid back, because you robbed
6 \$300,000, perhaps, from your employer. That blows most
7 people's mind to think about a number that large. I
8 think Mickey Mantle might have earned that one year,
9 way back in the day.
10 That's a huge amount of money over a period
11 of time. You made a conscious choice. You didn't take
12 it one day as the prosecutor indicated. It was a
13 pattern of conduct.
14 You thought them screwing you and not giving
15 you medical benefits, them not caring enough about how
16 you allegedly got robbed and put in a room, them not
17 caring about all the things that you wanted justified
18 you stealing from them. That's not the way it works:
19 You quit your job, or if it's an employment
20 violation, you report the employment violation, or you
21 speak to someone else about finding a different job.
22 But you don't stay there and steal, because
23 this is what happens when you do that, because you
24 ultimately get caught and you've got to pay the piper.
25 And that's what's happening today.

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Sentence

1 You also have, sir, an obligation for a DNA
2 sample to be used by law enforcement. And you have to
3 pay \$50 to Victims of Crime Compensation Office; \$30
4 towards Law Enforcement Officers Training and Equipment
5 Fund; \$75 Safe Neighborhood Services Fund.
6 Do I have a Right of Appeal form filed?
7 You have 1 day jail credit, as I understand.
8 Sir, I'm accepting your signed copy of a
9 Notice of Appellate Rights, which indicates that you
10 understand you have the right to appeal for 45 days.
11 You can extend it by an additional 30 days. And you
12 have a -- a right for 5 years to file motions for post-
13 conviction relief.
14 Have you had a chance to talk with your
15 lawyer about this, sir?
16 MR. TILL: We have, Judge.
17 THE COURT: All right. I accept --
18 MR. TILL: We have --
19 THE COURT: -- I accept --
20 MR. TILL: -- we have --
21 THE COURT: -- that, counsel. Thank you.
22 MR. TILL: -- we have previously, yes.
23 THE COURT: All right. And this is your
24 signature, sir? Yes?
25 THE DEFENDANT: Yes, sir.

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Sheet 17

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Sentence

1 THE COURT: And you signed it after you
2 talked about it with your lawyer, right?

3 THE DEFENDANT: Yes.

4 THE COURT: And you understood your rights
5 before you signed it?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: All right. I wish you a lot of
8 success and good luck.

9 And the 3 years is a 3-flat, as requested in
10 the plea form. There is no -- no minimum parole
11 ineligibility and there's 1 day jail credit. Is that
12 correct, counsel?

13 MR. TILL: Yes, Judge.

14 THE COURT: All right. Anything further? It
15 was very well presented.

16 Sir, you need to not go home -- you need to
17 not being going to jail sad and disappointed with your
18 lawyers that they -- they weren't able to -- to -- to
19 achieve you being sentenced less.

20 You need to be so pleased with the decision
21 you made to be involved with the agencies and to get
22 this law firm identified to help you, because it's
23 probably -- this is the most important day of your
24 life, because it's impacting your family.

25 So, every decision that you ever had about

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Sentence

1 family, this day is more important than even those
2 days, because you caused it to impact your family.

3 So, getting yourself out of that situation,
4 one of the best things that ever happened to you was
5 meeting these lawyers, because instead of being at risk
6 for 5 to 10 years, you have 3 years in New Jersey State
7 Prison and it's a flat sentence.

8 Your attorney has explained to you what 3-
9 flat means. It means some amount is deducted from that
10 before you become eligible to be released. You have 1
11 day of jail credit.

12 You had awesome representation, vigorous,
13 diligent, zealous beyond what the ethics rules require.
14 One of the best decisions you made in your life was to
15 be involved with these attorneys.

16 It may have happened to you by fortune. But
17 your decision to cooperate with them, which isn't
18 something all defendants do, so that they could advance
19 a case on your behalf, with all their brilliance and
20 all their advocacy skills, it often gets encumbered
21 because the client doesn't work well with the lawyer.

22 You chose to work well with your lawyers.
23 Your lawyers did an awesome job. And one day you'll
24 also appreciate just how significant a courtesy or --
25 or break you may have received from the State to end up

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Sheet 18

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Colloquy

1 with only 3-flat from what happened here.
2 Have a nice day. I wish you well. Counsel,
3 it was a pleasure having you here. Thank you, counsel.
4 MR. TILL: Thank you, Judge.
5 (Proceedings Concluded)
6
7
8
9
10
11

CERTIFICATION

I, Judy Kruppa, the assigned transcriber, do hereby certify that the foregoing transcript of proceedings at the Union County Courthouse, on February 8, 2019, digitally recorded, Time Index 9:31 to 10:13, is prepared in full compliance with the current Transcript Format for Judicial Proceedings and is a true and accurate compressed transcript of the proceedings as recorded, to the best of my knowledge and ability.

/s/ Judy Kruppa

March 9, 2019

Judy Kruppa AOC #650
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