

Nakoula Transcript

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1 Exhibit A. Apparently, the situation is deteriorating. I
2 have talked to the wife and the defendant's son and they have
3 been basically pleading with me for some way to solve this
4 problem because they cannot adequately take care of this man
5 at this point. It's truly a difficult situation, Your Honor,
6 and I'm not sure how we deal with it, but I think it's
7 relevant for at least consideration.

8 THE COURT: How old is the son? I thought the son
9 was college-aged.

10 MR. HENDERSON: The son is college-aged. He is a
11 very bright young man who is going to school on a full
12 scholarship at the University of California at Santa Barbara
13 so he is not even at home to be able to do this except
14 occasionally on the weekend.

15 THE COURT: Go ahead.

16  MR. HENDERSON: I notice, and before I leave this
17 point, I notice that the presentence report indicated that
18 and I'm quoting here, "It appears that the defendant's
19 involvement in the instant offense was caused by his need to
20 support his wife, three children and his father." And I
21 think that's pretty accurate. At the time he did this, he
22 was out of work in the gas station industry which is what
23 he's really familiar in this country and he was working swap
24 meets for a few dollars every weekend trying to support his
25 family.

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1 I attached as Exhibit B a letter from Mr. Henanin
 2 who knows the defendant on a personal basis, goes to church
 3 with him who describes him as a God-fearing man whose first
 4 priority is his family and has indicated in the letter which
 5 he sent to the Court that he is willing to put him to work as
 6 soon as possible so that he can provide the necessary support
 7 for his family and his father and rectify the problem that
 8 according to the presentence report with which I agree was
 9 what really caused this situation in the first place.

10 It just seems to me that the letter from the father
 11 and what we have learned about the situation at home is at
 12 least as strong as many of those cases, if not stronger than
 13 the cases like this Stronglan case that I have cited in my
 14 papers, which all granted downward departures for family
 15 circumstances, not big ones, but some relief along those
 16 lines in recognition of special family interests.

17 Now, the loss calculation to me is an interesting
 18 legal concept. My argument that the loss significantly
 19 overstates the seriousness of the defendant's involvement
 20 sort of dovetails with the role and participation. He was
 21 the guy as Your Honor knows went in and cashed the checks and
 22 then the money would go to Mr. Salamay.

23 Now, I cited a couple of cases which I know
 24 Your Honor is familiar at this point having read the
 25 sentencing memorandum which I thought were good examples of

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1 think it's appropriate to attribute something credit cards in
 2 another person's possession in another person's property to
 3 this defendant. If you use the \$500 figure for the 162 cards
 4 actually found at the defendant's home, that would increase
 5 the \$794,000 figure by \$81,000 which would take it up to
 6 \$875,000 which is still under the million break-off point.

7 So the loss figure, just by the numbers alone,
 8 would be a Level 14 for the add-on to the basic fraud rather
 9 than a 16 which would reduce it by two points right there
 10 without even considering any of the downward departures or
 11 the combination arguments. Again, recalling this is the
 12 individual who received 60 to \$70,000 of the proceeds while
 13 someone else walked away with 90 percent.

14  The fifth prong that I indicated that I thought
 15 should be considered as part of the combination package is
 16 this defendant's cooperation. He's undergone detailed
 17 debriefings. I wasn't present at the early ones because I
 18 wasn't counsel, but I was present at the later ones. He has
 19 implicated Mr. Salamay. There is no question but that
 20 Mr. Salamay at some point is gonna be indicted if he hasn't
 21 already been.

22 The two-point recommendation to me seems very
 23 light. I spent half my time in that office making these kind
 24 of recommendations and the other half I have been on the
 25 other side. And it's so common, Your Honor, has seen as many

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1 of them as I have. I mean these debriefing things are very
2 subjective. It's very common to get six or more points for
3 exactly what Mr. Nakoula did here to get two points.

4  We all know what's gonna happen. Salamay is gonna
5 get arrested some day and based on the debriefing information
6 turned over, he is gonna enter a guilty plea or if he
7 doesn't, then Mr. Nakoula is gonna be called on to testify at
8 trial at which point it's too late to give him any other
9 cooperation points because that could be a year or more down
10 the road and that's why the two point recommendation I
11 believe is too light.

12 The government I understand is entitled to make
13 whatever recommendation they can, but Your Honor can
14 certainly consider that and situation as part of the overall
15 look at the factors as to whether a downward departure in
16 combination of all the circumstances might here be
17 appropriate.

18 The final thing I wanted to bring to the Court's
19 attention was the defendant's health. He's not a picture of
20 health as you have probably seen from the presentence report.
21 He has a variety of health problem. He has Hepatitis C which
22 I believe was discovered and diagnosed at the MDC. He has a
23 serious diabetes problem. He takes insulin twice a day and
24 he's had prostate issues. He's had surgery at least once for
25 that already and he is on some ten medications at this point

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1 system and he's clearly not in any eminent danger.

2 THE COURT: Yeah, but given that we're dealing with

3 someone of his age and with the problem with father and

4 everything else, although, I don't think it takes it out of

5 the heartland, my question is if he is in custody let's say

6 for, I think what I would suggest is a sentence of 27 months

7 and I guess what I would suggest is 21 months at BOP and six

8 months at a community corrections facility. And I think the

9 question is what the government has to say about that first.

10 MS. WILLIAMS: Your Honor, I don't have a strong

11 objection to it. In light of the defendant's age and health

12 conditions, I think that a custody sentence wherever he

13 serves it is appropriate as long as the bulk of that as

14 Your Honor has suggested is at BOP where I think his medical

15 conditions will be certainly considered and attended to.

16 THE COURT: Mr. Henderson.

17 MR. HENDERSON: That's fine. Apparently, the

18 government doesn't object to that and I'm appreciative. I

19 think it would help the family. Enable him to provide some

20 assistance to the father who is in dire need and as I say I

21 do believe Mr. Nakoula has gotten the message.

22 THE COURT: Did you Mr. Nakoula wish to be heard?

23  THE DEFENDANT: Yes, Your Honor.

24 I would like to start that I am sorry for what

25 happened. Now I know that it was wrong. Therefore, I

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1 decided to cooperate with the government to retrieve some of
 2 these mistakes or damage happened. I want to cooperate with
 3 the government that they can catch with this other criminals
 4 who is their involvement. And I would like to make an
 5 apology to the Judge Snyder and I hope that you accept my
 6 apology. I also make apology to my father who is 83 years of
 7 age. I supposed to give him comfort and relief in his old
 8 age. And also I make apology to my wife and she is a father
 9 and mother for the children and my young child which I didn't
 10 see him for more than a year now and my daughter Christina
 11 which I was very close to her. And I hope that I made my
 12 case and I apologize again to the Court.

13 THE COURT: All right. And may I proceed to
 14 pronounce sentence?

15 MR. HENDERSON: Yes, Your Honor.

16 THE COURT: Okay. It is ordered that the defendant
 17 shall pay to the United States a special assessment of \$100
 18 which is due immediately. It is ordered defendant pay
 19 restitution in the total amount of \$794,700.57. Pursuant to
 20 Section 3663A the amount of restitution ordered shall be paid
 21 as follows:

22 To Wells Fargo Bank: \$69,310.53.

23 To Capital One: \$31,711.63.

24 To Bank of America: \$409,886.50

25 To Chase Wamu: \$223,343.09.

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