

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

UNITED STATES OF AMERICA)
)
vs.) No. 1:14-CR-00591-JCH
)
REYNALDO GRIEGO)

TRANSCRIPT OF PROCEEDINGS

SENTENCING

March 10, 2015

BEFORE: HONORABLE JUDGE JUDITH HERRERA
UNITED STATES DISTRICT JUDGE

Proceedings reported by stenotype.

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PAUL BACA, OFFICIAL COURT REPORTER

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1 THE COURT: All right. Next is USA versus
2 Griego, Case Number 14-CR-591.

3 MS. HENDERSON: Good morning, Your Honor.
4 Shammara Henderson for the United States.

5 MR. FOOKS: Good morning, Your Honor.
6 Devon Fooks on behalf of Mr. Griego.

7 THE COURT: Good morning to both of you --
8 to all of you, I guess.

9 Well, we are here today on sentencing.

10 Mr. Fooks, have you had a sufficient
11 opportunity to review the presentence report with the
12 defendant?

13 MR. FOOKS: I have, Your Honor. And
14 Mr. Griego has not alerted me to inconsistencies or
15 incorrect information on the presentence report.

16 I did note one small correction or error
17 that was made.

18 THE COURT: Has that been resolved?
19 Did you bring it to probation's attention?

20 MR. FOOKS: I did tell them.

21 THE COURT: Okay.

22 MR. FOOKS: I told them while Your Honor
23 was hearing the other case, because I wasn't sure.

24 And I also let Ms. Henderson know as well.

25 The error is minor, but when I calculated

1 Mr. Griego's criminal history points, I came up with
2 15 points as opposed to 16 that the -- that probation
3 calculated and included in paragraph, I believe, 55
4 of the presentence report, I think.

5 THE COURT: Uh-huh.

6 MR. FOOKS: So we would object to
7 paragraph 55. I think that the criminal history
8 score should be 15. And accordingly, we would then
9 also object to paragraph 57, when adding the two
10 points.

11 Pursuant to USSG Section 4A1.1D, if you add
12 two points to the -- what I believe is the correct
13 score of 15, paragraph 57 should say the total
14 criminal history score is 17.

15 THE COURT: All right.

16 Any comment? I'll ask Ms. Padilla as well.

17 But, Ms. Henderson?

18 MS. HENDERSON: Your Honor, I did recount
19 the points again, once Mr. Fooks pointed that out to
20 me, and I came up with 15 and 17 as well, Your Honor.

21 THE COURT: Okay.

22 Ms. Padilla?

23 THE PROBATION OFFICER: Your Honor, that --
24 that is correct.

25 I will make one note, though, that there is

1 a total of 15 points. I apologize to the Court and
2 to the parties.

3 However, only a total of four points can be
4 counted under USSG 4A1.1C. So really, the subtotal
5 is 14, and then two additional points for being under
6 a criminal justice sentence.

7 His total points will be 16 points.

8 THE COURT: All right. And now, does -- so
9 it doesn't change the criminal history category?

10 THE PROBATION OFFICER: No, it does not,
11 Your Honor.

12 THE COURT: Okay.

13 MR. FOOKS: And it's an 11(c)(1)(C) plea
14 agreement.

15 THE COURT: And it's 11(c)(1)(C), right.

16 MR. FOOKS: So it's a --

17 THE COURT: So I -- I guess I agree with
18 you, when you said at the beginning that it was a
19 minor correction. But --

20 MR. FOOKS: It's minor. It makes no
21 difference.

22 THE COURT: But it is noted, in any event.
23 Thank you.

24 With that, then, the Court will adopt the
25 factual findings that are contained in the

1 presentence report.

2 No evidentiary hearing will be necessary
3 today.

4 And as noted, it is an 11(c)(1)(C) plea
5 agreement, which calls for a specific sentence of 120
6 months.

7 And I have reviewed everything in this
8 case, everything that's been presented. I am
9 inclined to accept the plea agreement.

10 So if you have any additional comment or
11 argument, you may proceed.

12 MR. FOOKS: I do not have any additional
13 comment or argument.

14 I know that Mr. Griego spent quite a bit of
15 time and wanted to address the Court by way of a
16 letter that he wrote.

17 He has asked that I read it.

18 THE COURT: Okay. So you're going to read
19 a letter that was prepared by the defendant?

20 MR. FOOKS: It was, Your Honor.

21 THE COURT: Okay. Go ahead.

22 MR. FOOKS: (Reading) Dear Judge Herrera.

23 My name is Reynaldo Griego, and I would
24 like to address the Court.

25 First off, I would like to apologize to you

1 and to my family for hurting them by putting them
2 through all of this pain and suffering that I have
3 put everyone through with the bad decisions I was
4 making out there trying to burn people and hustling
5 to support my addiction to heroin.

6 I am truly sorry to everyone I have hurt.
7 I feel really sorry for letting my family down and
8 for letting my community down.

9 I just hope that the people who I have hurt
10 and let down -- the people I have hurt and my family,
11 who I have let down, I hope and pray that one day
12 they can forgive me for letting everyone down.

13 When I was -- when I -- when I get out and
14 have this behind me, I would like to become a youth
15 counselor to help troubled teens.

16 I would like to take classes and better
17 myself and give back instead of -- instead of always
18 having -- taking and hurting people.

19 I want to make a change and help troubled
20 youth, help them to make better decisions, and teach
21 them to make better choices than the ones I have
22 made, so they do not put their family members through
23 the same thing.

24 I truly apologize to you, Your Honor, and
25 to everyone I have hurt and I have let down.

1 Thank you for taking the time to hear me,
2 Your Honor.

3 Sincerely, Rey Griego.

4 THE COURT: All right. Thank you.

5 THE DEFENDANT: Thank you, Your Honor.

6 THE COURT: And, Mr. Griego, I listened
7 carefully to everything that you put in the letter.
8 But if there's anything else that you'd like to say,
9 you have that opportunity at this time.

10 THE DEFENDANT: I just want to apologize to
11 you, everybody I've hurt. I know this -- this isn't
12 my first time, and I'm -- I'm -- I made bad
13 decisions, and I just want to get all of this behind
14 me after I get out.

15 THE COURT: All right. Thank you,
16 Mr. Griego.

17 Ms. Henderson?

18 MS. HENDERSON: Your Honor, if you don't
19 have any questions for me, I won't go at length into
20 any of the details of the case. I know it's all
21 outlined in the PSR.

22 Mr. Winterbottom has spent a lot of time in
23 working on this case and determining an appropriate
24 amount of time for jail in this matter, considering
25 the circumstances of this specific case along with

1 his criminal history, so we would ask that you accept
2 the 11(c)(1)(C) agreement in this case.

3 THE COURT: All right. Thank you.

4 And I will accept the 11(c)(1)(C) plea
5 agreement.

6 You know -- you do have a significant
7 history and, you know, lots of drug-related
8 convictions. You have probation violations on
9 your -- in your history.

10 I noticed maybe a couple of shoplifting
11 convictions, battery. I mean, that's a lot of stuff.

12 And there were lots of -- lots of charges
13 that were dropped over the years. So -- so I know
14 that you've dealt with things like this in the past,
15 you know, courts and jail and probation officers and
16 the whole -- the whole nine yards.

17 But really, the -- the apologies that
18 you've made today and the goals that you told me that
19 you have for yourself will really only mean something
20 if you -- if you see them through.

21 You'd be surprised -- I mean, I sentence a
22 lot of people. I see people in court a lot. And
23 you'll be surprised at how many people don't seem to
24 have goals.

25 And it seems to me that if you really mean

1 it, and if you have every intention of turning your
2 life around to the point that you actually can help
3 young people that are facing a lot of these kinds of
4 choices, all of that really begins from within you
5 and the goals that you've set for yourself.

6 I think they're fine goals. But for you to
7 see them through is going to take some determination
8 on your part.

9 Now having said that, you're going to be on
10 supervised release after you're released from prison.
11 And I -- and I'm going to impose certain conditions,
12 things that you're going to have to do in order to
13 succeed in supervised release.

14 Now all of those things, I hope you take --
15 take them in a very positive light. People are going
16 to be here to try to help you to succeed.

17 Probation, they're going to make resources
18 available to you that are intended to help you
19 succeed. If you -- if you truly want to come out of
20 this in a positive way, then you'll have resources
21 to -- to try to help you get there.

22 But it's -- but it's going to start from
23 within you. And so I hope that you -- I hope that
24 you succeed. I hope I don't see you in court
25 anymore, and I hope that the decisions that you make

1 in the future, that you do keep in mind your family
2 and people who you have hurt, because I'm sure that
3 it's not a nice feeling. I'm sure that you want
4 better for yourself.

5 So I just -- you know, I hope that you're
6 able to see yourself through -- through this and
7 make -- make the life for yourself that you want.

8 So the Court has reviewed the presentence
9 report factual findings.

10 The Court has considered the sentencing
11 guideline applications and the sentencing factors
12 that are set fourth in 18 United States Code
13 Section 3553(a)(1) through (7), including the finding
14 that the defendant is a career offender.

15 Now the offense level is 31 and the
16 criminal history category is VI, establishing a
17 guideline imprisonment range of 188 to 235 months.

18 However, under Rule 11(c)(1)(C) of the
19 Federal Rules of Criminal Procedure, the Court
20 accepts the plea agreement which includes a specific
21 sentence of 120 months.

22 The Court is satisfied that the agreed
23 sentence is justified.

24 The Court notes the defendant conspired
25 with two co-defendants to sell 19.2 grams of

1 methamphetamine in actual weight to an undercover
2 officer in Bernalillo County.

3 So as to Count 1 of superseding indictment
4 1:14-CR-00591-001 JCH, the defendant, Reynaldo
5 Griego, is committed to the custody of the Bureau of
6 Prisons for a term of 120 months.

7 The Court recommends that the defendant
8 participate in the Bureau of Prisons 500-hour drug
9 and alcohol treatment program.

10 The defendant is placed on supervised
11 release for a term of four years.

12 The defendant must comply with the standard
13 conditions of supervised release and the following
14 mandatory conditions:

15 The defendant must not possess a firearm,
16 ammunition, destructive device, or any dangerous
17 weapon.

18 The defendant must corporate in the
19 collection of DNA, as directed by statute.

20 The following special conditions will also
21 be imposed:

22 The defendant must participate in and
23 successfully complete an outpatient substance abuse
24 treatment program approved by the probation officer,
25 which may include testing.

1 The defendant is prohibited from
2 obstructing or attempting to obstruct or tamper in
3 any fashion with the collection, efficiency, and
4 accuracy of any substance abuse testing device or
5 procedure.

6 The defendant may be required to pay a
7 portion of the cost of treatment and/or drug testing
8 as determined by the probation office.

9 Now, the Court is imposing this special
10 condition based on the defendant's history of heroin
11 and methamphetamine abuse.

12 The defendant must also submit to a search
13 of the defendant's person, property, or automobile
14 under the defendant's control, to be conducted in a
15 reasonable manner and at a reasonable time, for the
16 purpose of detecting firearms and ammunition or any
17 illegal substances or any other contraband, at the
18 direction of the probation officer.

19 The defendant must inform any residents
20 that the premises may be subject to a search.

21 Now, the Court is imposing this special
22 condition in order to help the -- help monitor the
23 defendant's compliance with supervised release and
24 also compliance with the law.

25 The defendant must refrain from the use and

1 possession of alcohol and other forms of intoxicants.

2 The defendant must refrain from the use and
3 possession of synthetic cannabinoids or other legally
4 sold designer drugs.

5 And these special conditions are imposed in
6 order to assist the defendant in maintaining complete
7 sobriety while in substance abuse treatment.

8 The defendant must participate in and
9 successfully complete an outpatient mental health
10 treatment program approved by the probation officer.

11 And the defendant may be required to pay a
12 portion of the cost of this treatment, to be
13 determined by the probation officer.

14 And the Court is imposing this special
15 condition based on the defendant's mental health
16 history.

17 Based on the defendant's lack of financial
18 resources, the Court will not impose a fine.

19 The defendant will pay a special assessment
20 of \$100, which is due immediately.

21 And lastly, the Court finds that pursuant
22 to the plea agreement, the defendant waives the right
23 to appeal the final sentence imposed by this Court
24 under 18 United States Code Section 3742(a).

25 So, Counsel, is there any reason that

1 sentence should not be imposed as I have stated it?

2 MS. HENDERSON: Nothing from the
3 government, Your Honor.

4 THE COURT: Mr. Fooks?

5 MR. FOOKS: Nothing with regard to the
6 sentencing, Your Honor.

7 Mr. Griego did want to make a request
8 regarding his incarceration.

9 THE COURT: Okay.

10 MR. FOOKS: And he would prefer, if he
11 would be allowed, to serve his time either at FCI
12 Terminal Island, Lompoc, or Victorville, Your Honor.

13 THE COURT: Okay. And is there a reason
14 for those requests? Sometimes it helps if there's --

15 MR. FOOKS: I'm sorry, Your Honor. I
16 didn't -- I said Victorville. I meant to say FCI
17 Safford, which is in Phoenix. I apologize.

18 THE COURT: So Terminal Island, Lompoc, or
19 Safford?

20 MR. FOOKS: Safford.

21 THE COURT: Okay. And is there a reason
22 for these requests?

23 MR. FOOKS: Well, he wants to be close to
24 family. But he also, as Your Honor is aware, has
25 done time previously in the federal system,

1 specifically at FCI Florence.

2 He has -- he's concerned about going to FCI
3 Florence. It's likely that there's still people
4 there that he knows. And in an effort to keep
5 himself out of trouble and out of the type of
6 situations that landed him where he is now, he would
7 rather be away from FCI Florence.

8 He's trying to get as far away as possible,
9 so that's why he chose the two locations in -- in
10 California.

11 However, if Your Honor feels more
12 comfortable having him closer to home where his
13 family is, that's what he requests.

14 THE COURT: The only reason I ask is
15 because we make recommendations only. They don't
16 necessarily follow our recommendations. And
17 sometimes, if we have reasons for the
18 recommendations, they take those reasons into
19 consideration. So that's the only reason I was
20 asking.

21 But I will make the recommendation for
22 Terminal Island, Lompoc, or Safford, so that he can
23 be somewhat close to family, but also be away from
24 some of the influences that he was exposed to in
25 Colorado.

1 MR. FOOKS: And I also would like to put on
2 the record, Your Honor, in my conversation with
3 Mr. Griego this morning, he informed me that the
4 husband of one of his co-defendants is at FCI Black
5 Canyon. So that's specifically --

6 THE COURT: So he wants to be away from
7 those two institutions for those reasons.

8 Okay. Well, the Court will make the
9 recommendation. I don't know whether the Bureau of
10 Prisons will accommodate the recommendation, but I'll
11 make the recommendation, nonetheless.

12 MR. FOOKS: We appreciate it.

13 THE COURT: All right. So the Court will
14 order sentence imposed as stated.

15 MR. FOOKS: Thank you, Your Honor.

16 THE COURT: Thank you for your appearance
17 today.

18 MS. HENDERSON: Thank you, Your Honor.

19 May I be excused?

20 THE COURT: You may.

21 (Proceedings concluded at 10:08 a.m.)
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CERTIFICATION

I certify that the foregoing is a correct transcript from the record of proceedings in the above-entitled matter. I further certify that the transcript fees and format comply with those prescribed by the Court and the Judicial Conference of the United States.

Date: January 12, 2017

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