

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION

FILED BY *E* D.C.
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ROBERT R. DETROLIO
CLERK, U.S. DIST. CT.
WESTERN DISTRICT OF TENNESSEE
MEMPHIS

UNITED STATES OF AMERICA,

Plaintiff,

Case No. 96-20080 D

vs.

STEPHEN D. TOARMINA,

Defendant.

ORDER DENYING MOTION TO RECONSIDER OR IN THE
ALTERNATIVE TO CORRECT SENTENCE

Before the court is Defendant, Stephen Toarmina's motion, seeking to have the court reconsider the imposition of a 39 month sentence. Defendant contends that for the reasons set forth in his motion, he should not be subject to a longer period of incarceration than of co-defendant Alton Ray Mills. Defendant argues:

First, unlike the defendant Mills, the defendant Toarmina did not testify at the trial of his case, nor did the defendant Toarmina (again, unlike the defendant Mills) offer any other witness testimony at trial in an attempt to convince the jury that he [Toarmina] did not commit the wrongful acts factually set forth in the Indictment. Instead, the defendant Toarmina advised the unindicted co-conspirators to tell the truth, and relief on legal jurisdictional issues for his sole defense.

Unlike Toarmina, the defendant Mills testified extensively at trial, expressly denying any involvement or wrongdoing. Thus, Mr. Mills' trial testimony was totally contrary to his position at sentencing, when he ultimately factually admitted guilt. Considering this circumstances, and others, the defendant Toarmina would respectfully submit that it would be inequitable to punish him more harshly than Mills at sentencing, while at the same time commending Toarmina for telling the trial witnesses against him to be truthful - something

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that the defendant Mills clearly never did.

Second, the final sentencing guideline (offense level) calculations in this case were based on the Money Laundering charges appearing as Courts [sic] 15, 16, 17 and 18 of the Indictment. Those four (4) counts specifically refer to the defendant Mills as being the ultimate recipient/beneficiary of the laundered funds. Certainly this fact, as particularly and specifically alleged in the Indictment, does not equitably favor either a lesser fine or a shorter sentence of confinement for the defendant Mills (or a harsher sentence for the defendant Toarmina).

Third, [the] defendant Mills, not Toarmina, was in a management position with the Sheriff's Department. Without Mills' power and authority, no job selling scheme could have been accomplished. Moreover, it is apparent from the Indictment, as well as from the presentence report, that Mills dealt with others, side from Toarmina, in committing separate criminal acts. Count 14 of the Indictment, for which Mills was originally convicted and sentenced, involved another co-conspirator Cliff Avent and another victim Robert Wilson. Toarmina had no involvement with the victim Mr. Wilson, and only Mills was charged convicted on Count 14. Again, these circumstances would militate against Mills effectively receiving a reward of more favorable sentencing than Toarmina.

(Motion for Reconsideration, pp 2-3).

First, the court notes that Defendant Toarmina was sentenced within the guideline range of 33-41 months. Further, the 39 month sentence is not materially disparate to the 37 month sentence of Defendant Mills.

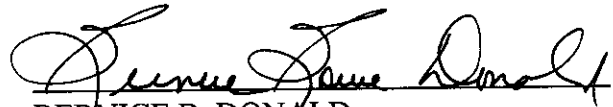
Next, the courts observes, based on the uncontested information presentence report, that Defendant Toarmina's actions warranted the particular sentence imposed by the court. Mr. Toarmina has not acknowledged his wrongdoing. Further, he actively laundered money through his business account, actively extorted payments from individuals, impersonated law enforcement, and abused law enforcement officers and citizens.

While the court commended Defendant for encouraging persons who testified before the grand jury to give truthful information, those actions did not compensate for the egregious and unlawful action committed by Mr. Toarmina. In fact, Mr. Toarmina's actions prevented him from facing an obstruction of justice enhancement or an additional substantive criminal charge.

Accordingly, the court finds that Defendant's Motion for Reconsideration is not well founded, as Defendant's sentence of 39 months imprisonment and a \$10,000.00 fine, is within the guideline range and appropriate under the facts and circumstances of this case.

Based on the foregoing, Defendant's motion is **denied**.

IT IS SO ORDERED this 3rd day of April 2001.


BERNICE B. DONALD
UNITED STATES DISTRICT JUDGE



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Honorable Bernice Donald
US DISTRICT COURT