

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY
CRIMINAL NO. 15-196-(FLW)-1

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UNITED STATES OF AMERICA	: <u>TRANSCRIPT OF</u>
	: <u>SENTENCE</u>
v.	:
	: <u>OCTOBER 15, 2015</u>
BOBBY BOYE,	:
a/k/a, BOBBY AJIBOYE	:
a/k/a, BOBBY AJI-BOYE	:
Defendant	:
-----	:

CLARKSON S. FISHER, UNITED STATES COURTHOUSE
402 EAST STATE STREET, TRENTON, NEW JERSEY 08608

B E F O R E: THE HONORABLE FRED A L. WOLFSON, USDJ

A P P E A R A N C E S:

PAUL J. FISHMAN, UNITED STATES ATTORNEY
BY: SHIRLEY UCHENNA EMEHELU, AUSA
On behalf of the Government

K. ANTHONY THOMAS, ESQUIRE
On behalf the Defendant Bobby Boye

A L S O P R E S E N T:

DON MARTENZ, US PROBATION OFFICER

* * * * *
VINCENT RUSSONIELLO, CCR, CRR
OFFICIAL U.S. COURT REPORTER
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C E R T I F I C A T I O N

PURSUANT TO TITLE 28, U.S.C., SECTION 753, THE
FOLLOWING TRANSCRIPT IS CERTIFIED TO BE AN ACCURATE
TRANSCRIPTION OF MY STENOGRAPHIC NOTES IN THE
ABOVE-ENTITLED MATTER.

S/Vincent Russoniello
VINCENT RUSSONIELLO, CCR
OFFICIAL U.S. COURT REPORTER

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THE COURT: Thank you, Ms. Emehelu.

I'll make my comments now with regard to the
3553(a) factors. Starting with the nature and

1 circumstances of the offense and the seriousness of
2 the offense.

3 I think that the government has just spent
4 substantial time going through, in fact, what the
5 offense was which on its face demonstrates the
6 seriousness of it. So I will make only a few comments
7 which should not in any way be interpreted as because
8 they may not be as lengthy as the government's that it
9 minimizes in any manner the seriousness of this
10 offense.

11 It is correct that the victim in this case was
12 a very young and poor nation that relied principally
13 upon this asset that it had, its natural resource of
14 petroleum, and that it was using and relying on
15 advisors to assist them with it, and also Norway that
16 was involved in this endeavor and locates the
17 defendant.

18 The fraud here was really of such a major
19 level that I can't say enough about it in that Mr.
20 Boye was given a wonderful opportunity. There was
21 employment, yes, and he was going to be paid well for
22 that employment. But it was more than just the salary
23 he was going to get. He accepted a position that was
24 really of a new kind that was going to assist this
25 country.

1 He was going to be on the ground floor of
2 assisting them in moving forward in an economic way.
3 That opportunity to not only perform professional
4 services that appears from his educational background
5 that he had the ability to do and advise upon, but to
6 also do what I would call "do good" to assist this
7 country in moving forward in a very important way, and
8 a country that had been ravaged by civil war and was
9 looking to get itself on its feet and move forward
10 based upon this very important and valuable natural
11 resource. So the opportunities for Mr. Boye were
12 tremendous to accomplish some very, very good things.

13 And you had a country who based upon its in
14 many ways naivete about this industry upon which it
15 was embarking and how to go about it clearly needed
16 the advisors to assist it, was taking the assistance
17 from Norway in selecting such individuals, or
18 suggesting to them the individuals, and obviously
19 having made the selection put great trust and faith in
20 Mr. Boye in performing the services and having a
21 loyalty and fidelity to them that they expected to
22 have.

23 And even today Mr. Boye says how fond he was
24 of the country and how well he was treated by the
25 government. Obviously, particularly because of the

1 kind of small country it was and where they were going
2 and the number of limited people involved in assisting
3 them, this position of trust was obviously fostered
4 and created at an early stage. This country welcomed
5 him and made him one of their own which makes even
6 more egregious the fraud that was then committed upon
7 them. It wasn't simply some stranger committing the
8 fraud that we sometimes get in bid-rigging or things
9 of this nature, but this was one of their own at this
10 point who decided to abuse that trust.

11 In that connection I need to comment obviously
12 upon the manner in which it was carried out and the
13 comments that were made that Mr. Boye seems to think
14 because he was held in such good light by this country
15 that if he had simply disclosed that he could do this
16 work he would have been picked. Don't pull the wool
17 over my eyes.

18 We all know that you placed yourself in a
19 tremendous conflict of interest and you understood
20 that which is why you hid it so well. But it wasn't
21 just you presenting that this was an Opus & Best with
22 one man at the top -- not you, whoever you wanted to
23 claim it was going to be -- but you had a host of
24 professionals that you represented to be part of this
25 company with resumes to match that would indicate they

1 were looking at a multi-million dollar contract of
2 work that was going to go forward to give them advice
3 both from an accounting and legal perspective, which
4 is why when you created this company you didn't just
5 make it a two or three-person company. You presented
6 it as a dozen people, 20 people who could perform all
7 these different services.

8 Because as we know when you are talking about
9 something of this level nobody goes out and hires the
10 solo practitioner out there with the shingle out, but
11 looks for the big firms that have many individuals
12 that can perform the different kinds of work at any
13 given time. So you very well plotted out what it would
14 be that would be necessary to convince, one, the other
15 two on the committee to make a recommendation and
16 ultimately the country to accept this sham company.

17 So let's not be fooled today that if you just
18 said, I could do all the work for you, that they would
19 have said, great, come in, do everything, be our
20 advisor, be everything else too, a one-man-show.
21 Obviously, though, you have great talents because you
22 were able to do the work.

23 I must say when I read through all of what you
24 did and the way you described these individuals, some
25 fake -- I don't know if you found real names out there

1 somewhere and put some resumes on -- but whatever it
2 was it was quite sophisticated and involved to come up
3 with this. And all to get, not to help the country,
4 because there were others out there that could have
5 done a good job too that could have helped the
6 country, but to line your pockets. And what did you
7 do with the money? Expensive cars, jewelry,
8 properties. Partly the reason why there is an ability
9 to get this forfeiture and hopefully compensate to
10 more or less say because you spent your money on
11 things.

12 And the victim here, the country, the fact
13 that they received services that you described as
14 services that are still being used and good services
15 doesn't mitigate the crime. One, it was of course
16 important that you perform the services because
17 otherwise Opus & Best would have been terminated if
18 they weren't providing services, but moreover it's not
19 novel to me.

20 I have sat and seen many defendants in fraud
21 cases obtaining contracts from government. Here it's
22 generally here in the US. This happens to be a
23 foreign country. But obtaining contracts that are
24 sent out for bidding and obtaining them through fraud
25 or bribes. And in virtually all of those cases they

1 did the work. Whether it was a demolition contractor,
2 or whoever it might have been, it wasn't a mitigating
3 factor because they did the work. That was the only
4 way they were going to get paid and they may have been
5 capable of doing the work. But here it's how you went
6 about getting it and the fact that not only did you do
7 it dishonestly, but it prevented honest bidders from
8 getting the work that could have also done the work
9 and been paid the same money. It's a fraud upon the
10 country.

11 It's more egregious in my mind because it was
12 not just upon a corporation who may have some kind of
13 insurance or whatever that could make them whole, and
14 not just done to our country, but you were really sent
15 out there in some ways as a personal ambassador to
16 this country hand picked by Norway to assist an
17 underdeveloped poor country.

18 It's almost akin to what we call the
19 vulnerable victim here, but it's not exactly. But
20 I'll point out, this particular country that welcomed
21 you and that you took advantage of, the crime is
22 extremely serious and I won't go through all the
23 aspects of it at this point.

24 Now, looking at deterrence both from a
25 specific and general deterrence perspective. As to

1 specific deterrence, it is absolutely an important
2 consideration here. This is not the first time that
3 you committed a criminal act, defrauded. What is
4 incredible to me is given how obviously intelligent
5 and educated and able that you were to do good work,
6 that you were employed by very high ranking companies,
7 Morgan Stanley, Mastercard, and this company out in
8 California that I'm not familiar with, that you
9 embezzled from the company and you received a sentence
10 and apparently the sentence allowed you to serve it in
11 a halfway house for white collar criminals.

12 We don't do that here in federal court for
13 some important reasons, but that did not act as a
14 deterrence to you because you would have thought that
15 someone of your intellect that would have been a
16 wake-up call. I escaped prison. I did something
17 really wrong. I could never do anything like that
18 again to an employer or anyone else, and lo and behold
19 here you were a few years later doing the same.

20 And even with your employer there of course
21 preceding that was the employment with Morgan Stanley
22 and your actions there that ultimately result in you
23 being banned by the New York Stock Exchange. Frankly,
24 it boggles my mind that one of the things apparently
25 when you went to California was telling Morgan Stanley

1 that you were on a medical leave with some illness,
2 and it turns out you took another job in California
3 and then they terminated you upon discovering that and
4 all the investigation occurs and that's where it comes
5 out. And here too at some point this investigation
6 begins when you told Timor-Leste that you had a life
7 threatening illness and they started looking into
8 that.

9 There is a pattern here and it's a pattern
10 that unfortunately goes back to your days working with
11 Morgan Stanley, your other employer, that's more than
12 a decade old and you have not learned the lesson. So
13 specific deterrence is a very important consideration
14 for this Court and you clearly have never served real
15 prison time.

16 As to a general or public deterrence, it is an
17 important consideration for this Court because also
18 different than how you were treated in California by,
19 quote, this halfway house for white collar criminals,
20 we take seriously fraud, white collar crimes, and
21 there has to be a recognition of that by the public
22 that no matter how educated you are, how good you are
23 at what you do, you commit a serious crime, you have
24 to do serious time.

25 There is also of course the concern of the

1 Court for disparity of sentencing for similar crimes
2 and I must consider that as well.

3 Looking at your personal history and
4 characteristics. Some of the things that I've
5 mentioned about, the prior activity in your employment
6 both with Morgan Stanley, the criminal history that
7 you had already speak to that somewhat, but let me
8 point out that what I've got here is, it was
9 indicated, I do understand that there is some
10 difficulty in early childhood, your father, but you
11 went about succeeding.

12 You got a law degree in your home country of
13 Nigeria. You came to the US. You attended UCLA. You
14 got a LOM. Then got a Masters in Business Tax at USC.
15 First of all, amazing schools, opening up amazing
16 opportunities for you. You are clearly a very
17 intelligent man and able and capable man and had a law
18 degree. I'm not quite sure how New York State
19 admitted you to the bar considering your prior
20 conviction, but that's not for me to determine.

21 All of those degrees that you had, you earned
22 those degrees, and clearly when you went to
23 Timor-Leste you were capable. You did work as an
24 advisor and you pointed out even the other advice that
25 you gave them was a one-man show without the advantage

1 of a big firm behind you. It was real. It was good
2 work product.

3 As I said, I am stymied by what greed must
4 have motivated you to do this because you could have
5 achieved and accomplished so many things just because
6 of the qualities and education that you had, and
7 instead you used that to take advantage.

8 I know that you currently have two small
9 children. I know it also appears from the PSR that
10 you are in the midst of divorce. Clearly, your
11 relationship has broken down. On a personal level,
12 you have a lot of things to make up for, mending to do
13 at some point if you want relationships with your
14 children.

15 Now, what you are going to do when you are
16 released from prison is going to be up to you.
17 Presumably, with this felony conviction, you are going
18 to be disbarred. There are certain limitations you
19 are going to have on what you are able to do. But
20 certainly given your natural innate abilities, you
21 should be able to do and accomplish a number of
22 things, but you are going to need a major change.

23 I have considered all of those 3553(a) factors
24 and in fashioning a sentence that's sufficient but not
25 greater than necessary I, one, disagree with the

1 request by the defendant for a sentence at the bottom
2 of the Guideline range. I think that absolutely does
3 not suffice as a sufficient sentence.

4 A Guideline sentence is appropriate and I am
5 going to impose a sentence of 72 months in this case.

6 I am also going to impose a 3-year period of
7 supervised release in this matter.

8 I would also agree that given the large
9 restitution and forfeiture order in this case that he
10 would not have the ability to satisfy a fine. My
11 interest is in making sure that restitution is paid.
12 So I will waive the fine.

13 Sentence is as follows:

14 It is the judgment of the Court that the
15 defendant, Bobby Boye, is hereby committed to the
16 custody of the Bureau of Prisons to be imprisoned for
17 a term of 72 months.

18 Upon release from imprisonment, the defendant
19 shall be placed on supervised release for a term of
20 3 years.

21 Within 72 hours of release from the custody of
22 the Bureau of Prisons, the defendant shall report in
23 person to the Probation Office in the district to
24 which he is released.

25 While on supervised release, the defendant

1 shall not commit another federal, state, or local
2 crime, shall be prohibited from possessing a firearm
3 or other dangerous device, shall not possess an
4 illegal controlled substance, and shall comply with
5 the other standard conditions that have been adopted
6 by this Court.

7 Based on information presented, the defendant
8 is excused from the mandatory drug testing provision.
9 However, he may be requested to submit to drug testing
10 during the period of supervision if Probation
11 determines a risk of substance abuse.

12 The following special conditions shall apply:

13 There will be had a new debt restriction that
14 will be in place until the restitution is satisfied.
15 There will also be a self-employment or business
16 disclosure condition as well. Those are the only
17 conditions being imposed.

18 It is further ordered that the defendant shall
19 make restitution in the amount of \$3,510,000. I will
20 waive the interest requirements in the case. Payments
21 shall be made payable to the U.S. Treasury and
22 forwarded to the Clerk of the Court in Trenton, for
23 distribution to Ambassador Pierre-Richard Prosper, and
24 there is an address for that.

25 The restitution is due immediately. It is

1 recommended that the defendant participate in the
2 Bureau of Prisons Inmate Financial Responsibility
3 Program. If he participants, the restitution shall be
4 paid from those funds at a rate equivalent to \$25
5 every 3 months.

6 In the event the entire restitution is not
7 paid prior to the commencement of supervision, the
8 defendant shall satisfy the amount due in monthly
9 installments of no less than \$500 to commence 30 days
10 after release from confinement.

11 Defendant shall notify the United States
12 Attorney for this district within 30 days of any
13 change of mailing or residence address that occurs
14 while any portion of the restitution remains unpaid.

15 As I've indicated, I find the defendant does
16 not have the ability to pay a fine. I will waive the
17 fine in this case.

18 Finally, it is further ordered the defendant
19 shall pay to the United States a total special
20 assessment of \$100 for the single count of conviction,
21 which is due immediately.

22 I advise the parties of their right to appeal
23 this sentence.

24 I will also be entering a forfeiture order
25 that is going to be submitted to me upon consent. Is

1 that correct?

2 MS. EMEHELU: Yes, your Honor.

3 A preliminary forfeiture order has already
4 been entered and filed in this matter. The United
5 States will be submitting a corrected consent judgment
6 of forfeiture that simply corrects the description of
7 the Elizabeth properties that has the correct street
8 number. That's the only correction.

9 THE COURT: Thank you.

10 The last thing, there has been a request for
11 voluntary surrender. Is there any objection by the
12 government?

13 MS. EMEHELU: No objection, your Honor.

14 THE COURT: I think you were requesting a
15 November 30th date.

16 MR. THOMAS: That's correct, your Honor.

17 THE COURT: If he has not yet been designated
18 at that point -- where is he currently living?

19 THE DEFENDANT: Mahwah, New Jersey.

20 THE COURT: If you have not gotten a
21 designation, you are to report to the Marshal's Office
22 in Newark on November 30th. It's a Monday. Just so
23 he doesn't have to come down to Trenton, we'll have
24 him report to Newark.

25 I know you asked that I recommend Fort Dix.

1 I'll recommend it. You know that it's totally up to
2 the BOP, however.

3 MR. THOMAS: Your Honor, one last issue with
4 regards to the \$500 per month while on supervised
5 release.

6 Would your Honor be inclined to put a range
7 and leave it up to the discretion of Probation and not
8 more than \$500?

9 THE COURT: We don't know what his employment
10 will be. I put that out there at this point because I
11 think he is capable of getting employment. It can be
12 adjusted. I usually say adjust it based upon what his
13 employment is at the time, but I can't leave it
14 totally at the discretion of Probation.

15 Mr. Martenz, is that correct?

16 THE PROBATION OFFICER: Set an amount now and
17 it could be adjusted. An amount has to be set.

18 THE COURT: Right. It has to be set. And it
19 can't be like saying a range or up to. We have to set
20 it.

21 MR. THOMAS: Can we put at least 500?

22 THE COURT: No. Or I wouldn't even say at
23 most because if he got a job that was very high paying
24 it could be more than 500. We don't know. I'm
25 putting out a number there that's based upon what his

1 education is and a possibility of getting employment.

2 Absolutely, one, if he doesn't obtain
3 employment immediately, he can't make that; and, two,
4 when he does get employment Probation may adjust that.
5 Absolutely.

6 MR. THOMAS: My concern is, your Honor, it's
7 setting him up for failure for a potential violation.
8 That's all.

9 THE COURT: Well, it wouldn't be a violation
10 anyway because they wouldn't violate if he doesn't
11 have employment that would allow him to pay that.

12 THE PROBATION OFFICER: Correct. It has to be
13 willful.

14 THE COURT: Right.

15 And I must tell you, I haven't seen a
16 violation on a failure to pay restitution unless there
17 are a lot of other things going on at the same time.

18 It will be adjusted. I have it on the record
19 that I've indicated that is to be adjusted based upon
20 whatever his employment situation is at the time.

21 MR. THOMAS: Thank you, your Honor.

22 THE COURT: Thank you.

23 MS. EMEHELU: Thank you, your Honor.

24 THE CLERK: All rise.

25 (Proceedings concluded.)

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C E R T I F I C A T E

I, **Vincent Russoniello**, Official United States Court Reporter and Certified Court Reporter of the State of New Jersey, do hereby certify that the foregoing is a true and accurate transcript of the proceedings as taken stenographically by and before me at the time, place and on the date hereinbefore set forth.

I do further certify that I am neither a relative nor employee nor attorney nor counsel of any of the parties to this action, and that I am neither a relative nor employee of such attorney or counsel, and that I am not financially interested in this action.

S/Vincent Russoniello
Vincent Russoniello, CCR, CRR
Certificate No. 675