

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 FREDA 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

1 (In open court, defendant present.)

2

3 THE CLERK: All rise.

4 THE COURT: Thank you.

5 I'll have the appearances. Everyone else may
6 be seated.

7 MS. EMEHELU: Good morning, your Honor.

8 Assistant United States Attorney Shirley
9 Emehelu on behalf of the United States.

10 With me at counsel table is Special Agent
11 Richard Tylenda of the FBI.

12 THE COURT: Thank you.

13 MR. THOMAS: Good morning, your Honor.

14 K. Anthony Thomas, Assistant Federal Public
15 Defender, on behalf of Bobby Boye who is seated to the
16 right of me.

17 THE COURT: Thank you.

18 We are here for the sentencing of Mr. Boye in
19 connection with his guilty plea to a count of
20 conspiracy to commit wire fraud.

21 I know that all counsel have received the
22 Presentence Report.

23 Mr. Thomas, have you had sufficient
24 opportunity to fully review the report with your
25 client?

1 MR. THOMAS: Yes, your Honor, I did have an
2 opportunity to review the Draft Presentence Report.

3 There are no Guideline corrections or
4 objections, and our objections with regard to certain
5 matters in the Presentence Report are noted in the
6 final version of the Presentence Report.

7 THE COURT: Thank you.

8 Then with that I will begin by calculating the
9 Guidelines in this matter.

10 To begin, the base offense level in this
11 matter is found in Sentencing Guideline 2X1.1(a), and
12 it is a level 7 under 2B1.1(a)(1).

13 There is an increase of 18 levels under
14 2B1.1(b)(1)(J), since the amount of loss exceeds
15 \$2.5 million, but is less than \$7 million, and that is
16 agreed to by the parties, and therefore the total
17 offense level is a 25.

18 With regard to specific offense
19 characteristics, the only adjustment upward is under
20 3B1.3, which is that Mr. Boye abused a position of
21 trust in a manner that significantly facilitated the
22 commission or concealment of the crime. There is a
23 two-level increase for that making it an adjusted
24 offense level of 27.

25 I find that Mr. Boye based on prior statements

1 would qualify for the two-level adjustment for
2 acceptance of responsibility.

3 And the government is moving for the
4 additional one level?

5 MS. EMECHELU: Yes, your Honor.

6 THE COURT: All right.

7 I will grant that and thus the total offense
8 level is a level 24.

9 With regard to criminal history, there are
10 four criminal history points and thus he is in a
11 criminal history category of 3.

12 So based upon a total offense level of 24 and
13 a criminal history category of 3, under the statute it
14 is up to 20 years imprisonment. The Guideline range
15 is 63 to 78 months.

16 Supervised release under the statute is up to
17 3 years, with a Guideline range of 1 to 3 years.

18 Under the statute, probation is a range of 1
19 to 5 years. He is ineligible under the Guidelines.

20 The fine under the statute is \$250,000, with a
21 Guideline range of \$10,000 to \$100,000.

22 I will discuss restitution in a moment, though
23 my understanding is that there was a stipulated amount
24 of restitution of \$3,510,000.

25 I understand that there may be some other

1 items that the victim wanted to have addressed. I'll
2 deal with those in a moment. But the stipulated
3 amount is the \$3,510,000.

4 Then there is the mandatory special assessment
5 of \$100 for the single count of conviction.

6 There is also, I understand, a forfeiture
7 order that's going to be entered.

8 First, counsel, are there any disagreements
9 with the Guideline ranges as I've read them to you?

10 MR. THOMAS: No, your Honor.

11 MS. EMEHELU: None from the government, your
12 Honor.

13 THE COURT: All right.

14 We should turn before I hear any sentencing
15 comments to the issue of restitution.

16 As I've indicated, I know that the parties in
17 the plea agreement had stipulated to the number of
18 \$3,510,000 which represented the contract payments
19 that were made to Mr. Boye that underlie the
20 substantive offense here. Correct?

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

22 MS. EMEHELU: Yes, your Honor.

23 THE COURT: All right.

24 And while I understand that the victim in this
25 case -- are we going to refer to it as Country A as

1 opposed to by its name? Everyone put it in the papers
2 already.

3 MS. EMEHELU: For today we can refer to the
4 country by name. We preferred from the government's
5 standpoint in the publicly filed documents, as we do
6 with all victims, that we not identify the victim by
7 name.

8 THE COURT: All right.

9 They had brought to the attention of the
10 government and the Court that there were other losses
11 and tax revenue proceeds from another matter which was
12 referred to as the Macau scheme. But as the
13 government concedes, it was prior to the time charged
14 in this conspiracy, and that amount had been
15 \$859,706.30.

16 They do concede and understand that because it
17 is prior to the time charged in the conspiracy, it
18 must be excluded from the restitution award. That
19 will not be entered.

20 There is also, Country A would like to receive
21 the \$130,000 in salary payments that were made to Mr.
22 Boye. The government points out in not actually
23 putting this forward that, first, they were payments
24 that could have been outside of the temporal period of
25 the charged conspiracy.

1 In any event, there would still be the issue
2 of offsetting them as to any kind of legitimate
3 services that were actually provided by Mr. Boye.
4 Nothing has really been presented to me at this point
5 and it would be very difficult to determine whether
6 there would be offsets to it based upon the services
7 that he gave or not.

8 Therefore, under the statute this would
9 obviously complicate and prolong the sentencing
10 process and would require additional hearings, and,
11 therefore, balancing of the factors, that will not be
12 awarded either.

13 The last is investigative costs and attorney's
14 fees. My understanding here is that there is a claim
15 for investigative costs and auditing costs in the
16 amount of \$379,169 that were paid to Deloitte.

17 MS. EMEHELU: Yes, your Honor, to Deloitte.

18 THE COURT: And then there were also claiming
19 to be in this certification that was submitted legal
20 expenses totaling at least \$600,000.

21 First of all, there is the issue under the
22 MVRA whether investigative costs and attorney's fees
23 qualify as, "other expenses incurred during
24 participation in the investigation of prosecution of
25 the offense," which may be reimbursable.

1 I'll hear from counsel on this issue. I
2 understand that the government based upon the plea
3 agreement is abiding by the stipulation of the
4 restitution amount. Is that correct?

5 MS. EMEHELU: Yes, your Honor.

6 The government abides by the stipulation that
7 the restitution amount due from Mr. Boye is
8 \$3,510,000. But would note as required by the parties
9 plea agreement that the government is obligated to
10 providing information requested by the Court or to
11 clarify any issues that may arise.

12 And so just for the record I would note that
13 there is some legal precedent for the award of
14 investigative costs, auditing costs, and attorney's
15 fees. The government has cited that case law in its
16 sentencing memorandum dated October 13th, 2015.

17 For example, there is a Third Circuit case,
18 United States v. Hayward, 359 F.3d 631, in which the
19 Third Circuit affirmed the District Court's awarding
20 reasonable costs that were incurred in the return of
21 the victimized children from London and making the
22 children available to participate in the investigation
23 and trial.

24 Here we are not dealing with victims
25 participating in trial, testifying as witnesses. But

1 in that situation the Court certainly did find that
2 reasonable costs were reimbursable and subject to
3 restitution.

4 I also cited a Second Circuit case, United
5 States v. Amato; United States v. Gordon, out of the
6 Ninth Circuit; and United States v. Phillips out of
7 the Fifth Circuit.

8 Now of course the wrinkle here though is the
9 government did try to parse out what subset of the
10 claimed investigative auditing costs and attorney's
11 fees are attributable to the charged offense, because
12 of course the victim provided information related to
13 the Macau scheme which your Honor has noted predated
14 the charged conspiracy here.

15 And in speaking with the victims's counsel,
16 it's my understanding that the billing, for example,
17 the attorney's fees were not itemized to segregate out
18 attorney's fees associated with simply the
19 investigation of the charged consulting contract
20 scheme.

21 And so this may render this basket of claimed
22 expenses including the auditing investigative expenses
23 as really being too difficult to confirm. And as your
24 Honor has already noted under the Mandatory Victims
25 Rights Act, Section 3663(A)(c)(3)(B), if the

1 determination of restitution would complicate or
2 prolong the sentencing process to a degree that would
3 result in the need to provide restitution to the
4 victim being outweighed by the burden on the
5 sentencing process, the Court in its discretion can
6 roll back determining whether that restitution claim,
7 that specific claim -- the Court can essentially take
8 a pass and say it's too complicated. It's going to
9 prolong this proceeding unnecessarily.

10 The parties have already stipulated the terms
11 of the charged scheme, the restitution due and owing
12 is \$3,510,000. And, in any case, the parties have
13 also entered into a forfeiture order that provides
14 that the forfeiture money judgment here in this case
15 is \$4,233,015.42.

16 So the defendant certainly will be forfeiting
17 proceeds, a large portion of which will go toward
18 making the victim whole, and he's agreed to forfeit
19 even more than what he's agreed is the restitution
20 number in this case.

21 THE COURT: Thank you.

22 Mr. Thomas, do you want to be heard on this?

23 MR. THOMAS: Certainly, your Honor.

24 Respectfully, your Honor, we ask the Court to
25 exercise its discretion because of the convoluted

1 nature of the request for either attorney's fees or
2 for accounting.

3 As the Assistant U.S. Attorney indicated, we
4 signed a forfeiture agreement that far exceeded what
5 we stipulated for restitution, and that forfeiture
6 agreement was signed away before any of the victims
7 submitting additional claims for restitution.

8 If your Honor is not inclined to exercise the
9 Court's discretion, we will respectfully request that
10 a hearing be conducted in order to ascertain the true
11 amount of money that should be attributed to this
12 offense with regard to the accounting firm and also
13 with regard to the law firm.

14 Thank you.

15 THE COURT: Thank you.

16 I've had an opportunity also to do some
17 additional research on the issue, and, first, I should
18 also point out that there is certainly case law that
19 would support investigative costs and/or attorney's
20 fees as being part of the recovery under the Mandatory
21 Victims Restitution Act.

22 Specifically, the Second Circuit and the Ninth
23 Circuit have ruled in that way. There are other
24 Circuits, the Seventh, Tenth and others that have
25 found that consequential damages such as attorney's

1 fees are not recoverable under the MVRA.

2 While I think this is an issue that they may
3 be recoverable, it's really not completely settled in
4 the Third Circuit. I nonetheless will go about why in
5 this particular case I will not be ordering either the
6 investigative costs or attorney's fees.

7 First of all, let me note, for instance, in
8 the Second Circuit, which has allowed such expenses,
9 the Court has found that what must be done is to show
10 by a preponderance of the evidence that:

11 One, the expenses were necessary;

12 Two, they were incurred while participating in
13 the investigation, prosecution, or attendance at
14 proceedings regarding the offense;

15 Three, they were incurred by a victim as
16 defined by the MVRA;

17 And, four, they do not require unduly
18 complicated determinations of fact.

19 First, obviously, the third factor, they were
20 incurred by the victim. Here, Country A had to pay
21 these fees. But the other factors are the ones that I
22 think at this point are problematic.

23 The first is obviously some kind of
24 investigation would have been necessary in this case.
25 But as has been candidly pointed out by the government

1 because -- I must first say that the certification
2 that has been submitted was bare bones at best and a
3 hearing would have been required to determine whether
4 indeed all of the expenses being claimed or what
5 portion of them were necessary, and then whether they
6 were incurred in connection with the investigation,
7 the prosecution for this particular crime, and whether
8 they do not require unduly complicated determinations
9 of fact.

10 So looking ahead on this record they would not
11 be allowable. I could not find by a preponderance
12 that the factors would have been satisfied. If a
13 hearing were held, what I'm hearing at this point is
14 that it would be difficult, if not impossible, to
15 parse out what portions of the investigative costs and
16 attorney's fees were attributable solely to the
17 conspiracy for which Mr. Boye is being sentenced as
18 opposed to investigating the Macau scheme, or any
19 other items that they may have looked at in connection
20 with Mr. Boye's employment and that go beyond the
21 particular scheme that we are looking at that involved
22 this \$3.5 million. So understanding that even if I
23 had a hearing that it would basically not be possible
24 to parse out those fees.

25 The last factor also cannot be satisfied in

1 that it would require unduly complicated
2 determinations of fact that frankly it does not appear
3 the Court could even make based upon the proffer as to
4 what might have been able to be provided by way of
5 testimony or documentation because of the manner in
6 which those services were incurred and the fees billed
7 to the country.

8 Therefore, while they might have been
9 recoverable items of damages -- and I'm not making
10 that legal determination either because, as I said,
11 the law is really in flux as to whether those would
12 constitute consequential damages that are clearly
13 recoverable in this Circuit -- it is not necessary for
14 me to make that legal determination because I find
15 that I would not be able to satisfy or the government
16 would not be able to satisfy me of those factors.

17 Thus, the restitution will remain at the
18 stipulated amount of \$3,510,000.

19 I also note in making this determination,
20 because I do appreciate that clearly there were some
21 costs involved by the country, that the forfeiture
22 order, as it has been pointed out by the government,
23 includes properties that will yield a recovery to the
24 country in excess of the restitution amount that's
25 been stipulated to, as well, and therefore will give

1 them some more relief towards any other expenses that
2 they may have incurred.

3 Therefore, I find also that that provides them
4 with some hopefully solace and recovery that they were
5 looking for in connection with these other fees and
6 costs.

7 With that, we will go on to the sentencing
8 comments. I understand from both letters and from the
9 plea agreement that there are no applications for
10 variances or departures. Is that correct?

11 MS. EMEHELU: None from the government, your
12 Honor.

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

14 THE COURT: Then, Mr. Thomas, I'm ready to
15 hear from you with regard to sentencing.

16 MR. THOMAS: Thank you, your Honor.

17 Your Honor, based on my submission to the
18 Court, we respectfully request a sentence of
19 63 months. 63 months, your Honor, it accounts for Mr.
20 Boye's fraud, it accounts for his criminal history.

21 As your Honor points out, his criminal
22 history, he has four criminal history points. That
23 moves him to category 3. Had he not been in category
24 3 or been in a lower category, your Honor, obviously
25 the penalty would have been much lower.

1 The Guidelines account for his abuse of trust.
2 There is no question, your Honor, that Mr. Boye abused
3 his trust with regard to Timor-Leste and acted as a
4 tax advisor for that country. He abused his trust.
5 In his plea allocution to your Honor, he indicated
6 that he was in a position of trust. He did not
7 disclose his interest when he submitted his bid. And,
8 yes, it's a bid.

9 And as the Assistant U.S. Attorney attached to
10 the sentencing letter, the company he created was
11 absolutely fraudulent. There is absolutely no
12 question about that. We are not standing here
13 disputing that. Mr. Boye admitted that the company he
14 created in order to submit this international tax
15 consultant bid was fraudulent.

16 But one of the things that strike me as odd
17 from the very beginning, your Honor, is that at its
18 inception Mr. Boye created a fraudulent company in
19 order to get the tax consultant work to try to benefit
20 the country of Timor-Leste.

21 In the victim's submission that's attached to
22 the government's brief, it's silent, your Honor, with
23 regard to the actual product that Mr. Boye produced.
24 And, in fact, your Honor, what Mr. Boye produced is
25 still being used by the country.

1 Your Honor, the last time I touched contract
2 law was probably in law school 20 years ago. But I
3 think there is a concept, I'm not sure whether it's
4 still valid or not, but back then 20 years ago there
5 was a concept called unjust enrichment.

6 THE COURT: It still exists.

7 MR. THOMAS: What we have here, your Honor, is
8 clearly a fraud from the very beginning. Unlike other
9 fraud cases where you know somebody is going in to
10 commit fraud and they are not going to worry about the
11 end product because they are going in to grab the
12 money and run, what we have here is Mr. Boye created
13 this fraudulent company from the very onset, all
14 right, but he did the work.

15 It's no excuse. It is absolutely no excuse
16 for committing the fraud to begin with. You can't,
17 you can't get the benefit of that, and I'm not saying
18 he should. But in fashioning a reasonable sentence,
19 your Honor, one that's sufficient but not greater than
20 necessary we should look at the total picture.

21 At one point when I first got involved in this
22 case I looked at the country's 2012 annual report and
23 there is nothing in there that talks about the
24 fraudulent nature of what -- the product, the end
25 product, the work product that he did. Nothing in

1 there talks about that. The attorneys don't mention
2 that the country is in irreparable harm because the
3 product he submitted was lousy and insufficient.

4 They hired a big law firm in California that
5 did at least \$600,000 plus -- close to \$900,000 of
6 investigation and nothing is said about the fact that
7 the work product was faulty. They still use it to
8 generate funds and it's going to be continued to be
9 used to generate funds.

10 So what we have here is somewhat of an unjust
11 enrichment. And, no, your Honor, I am not saying, I
12 am not saying one bit that his original fraudulent
13 conduct should be excused. Absolutely not. It should
14 not be excused. But when you look at the total
15 picture, your Honor, and you compare this fraud case
16 to others -- I don't know if there is any traditional
17 fraud case. There probable should not be. But just
18 your typical fraud case, your Honor, this case doesn't
19 cry out for a sentence at the high end of the
20 Guideline range.

21 Simply put, your Honor, we respectfully ask
22 that this Court sentence Mr. Boye to 63 months.

23 With that said, your Honor, Mr. Boye has been
24 on bail conditions prior to me being appointed to
25 represent him. There has been no issues with regard

1 to his compliance on bail.

2 We would respectfully request that Mr. Boye be
3 allowed to voluntary surrender. Specifically, your
4 Honor, Mr. Boye's lease on his current residence
5 expires on November 30th, which is a Monday, and we
6 would respectfully ask that a voluntary surrender date
7 be sent for November 30th.

8 Finally, your Honor, and I've explained to Mr.
9 Boye that the only thing your Honor can do is make a
10 recommendation with regards to the facility, we
11 respectfully request that Mr. Boye be designated to
12 Fort Dix.

13 Thank you.

14 THE COURT: Thank you, Mr. Thomas.

15 Mr. Boye, you may speak on your own behalf at
16 this time.

17 THE DEFENDANT: Your Honor, I stand before you
18 humbled for my misconduct. This is very painful, your
19 Honor. Timor-Leste gave me an opportunity that I did
20 not deserve and this, my conduct, is highly
21 unjustifiable. In that country I was very friendly
22 with everybody in the government there. They gave me
23 this opportunity and I abused it.

24 But also, your Honor, the sad part of it is
25 that the good I have done for that country has been

1 ruined by my criminal conduct. I volunteered as a
2 professor in the school for two years. I was teaching
3 there without any regulations on top of my employment.
4 I was buying books for the students that I was
5 teaching at the university.

6 But all of that and all of that good stuff
7 this single criminal conduct this is something that
8 until I go to my grave I will continue to regret
9 because I had enough goodwill from that country. If I
10 had disclosed that I owned this company based on my
11 professional competence, if they wanted to grant this
12 contract, they would have given it to me. The demons
13 misled me into this.

14 Your Honor, I assure you that until I go to my
15 grave, I will continue to regret this and I pray to
16 you, your Honor, that you administer justice -- I have
17 two young children, one is two years old, one is
18 four-year-old -- so that when I come back home I can
19 be a good role model and I could be a good father to
20 them. So I urge you, your Honor, to just have mercy
21 on me.

22 And to the people of Timor-Leste who are
23 represented here today, I extend my apologies to the
24 people and government of Timor-Leste. If there is any
25 way I can make this up in my life, any good deed that

1 I could do, and that's the reason why all the
2 properties that I owned I disclosed to them and I
3 forfeited them without any question.

4 So, finally, your Honor, I pray for mercy.

5 THE COURT: Thank you.

6 Ms. Emehelu.

7 MS. EMEHELU: Your Honor, the government
8 submits that a sentence firmly within the applicable
9 Guideline range of 63 to 78 months would be a just
10 result in this case.

11 The defendant, Mr. Boye, preyed upon a young
12 poor nation ravaged by years of civil war that was
13 just now embarking upon a period of independence and
14 critically had to rely on the expertise of
15 international advisors in an array of different areas,
16 but most particularly with respect to the management
17 and cultivation of its vast petroleum resources,
18 really it's only major source of national revenue.

19 Mr. Boye's history is quite remarkable. This
20 is an individual who was convicted in the state of
21 California for almost the same scheme. Different
22 facts, but the bottom line was he embezzled money from
23 his then employer and entered into a plea agreement,
24 was sentenced to 3 years, was released in 2007 after
25 having had the good fortune of serving out that

1 sentence in a halfway house for white collar
2 offenders.

3 At that point he was at a crossroads. He
4 could have taken a path toward leading an honest and
5 righteous life given his education, his intellect. He
6 is a person of tremendous abilities and yet what he
7 did was he relocates to the East Coast. He's no
8 longer Bobby Ajiboye. He's now Bobby Boye.

9 He's admitted to practice law in the state of
10 New York. We don't know whether he disclosed his
11 California conviction to the Character and Fitness
12 Board in New York in connection with his admission to
13 the bar there.

14 We do know he certainly did not disclose his
15 prior conviction to Country A or to the Kingdom of
16 Norway who actually was the nation who hired him
17 because Norway through the International Humanitarian
18 and Development Program was helping Country A identify
19 the creme de la creme of legal advisors and other
20 experts who could help the country really lift up and
21 develop and progress.

22 And Mr. Boye was one of those individuals who
23 was identified as being somebody who could make a real
24 contribution to the nation, and again he was at a
25 crossroads. He could have just proceeded as a legal

1 advisor. He was drawing a very good salary from that
2 position and he could have done what his duty was. He
3 had made a commitment to helping this country and what
4 does he do? Well, my salary is not enough. I need
5 more money. The lifestyle that I aspired to I guess
6 cannot be satisfied by making \$100,000, \$130,000 a
7 year. I need more money. And so he creates this sham
8 company.

9 This theme was so methodical and planned out.
10 This wasn't just some rash decision. He puts together
11 what appears to be a legitimate law and accounting
12 firm under the name Opus & Best and creates
13 documentation that would lead one to believe and
14 certainly led Country A to believe that this was a
15 long-standing legitimate firm with accountants and
16 lawyers, with 20, 30 years experience in the area of
17 petroleum taxation who had worked at various places,
18 whether the IRS or for some of the big accounting
19 firms, or the most prominent law firms, and these were
20 going to be the very people who would be staffing this
21 project -- quote, unquote-- when Opus & Best won the
22 contract.

23 At no time did Mr. Boye disclose that clearly
24 I am Opus & Best. I am the only member of Opus &
25 Best. Opus & Best is no other than me and I only just

1 created it. Actually, he didn't even formally file
2 the articles of organization until after he submitted
3 his bid, but certainly it was not in existence decades
4 before as falsely represented in the bid documents.

5 Now, Mr. Boye stands up today and says, oh, I
6 should have just been honest. Surely they would have
7 granted me the contracts given the relationship I had
8 with the country at the time. Well, I don't think
9 that has been shown and I don't think any rational Bid
10 Review Committee would award a contract to an
11 interested party.

12 Here the bid review process required the
13 disclosure of any conflicts of interest and Mr. Boye
14 who not only is Opus & Best but is also a member of
15 the three member Bid Review Committee. He's clearly
16 on both sides of the transaction here. He doesn't
17 disclose the conflict of interest. He doesn't
18 disclose that he is the real beneficiary of the
19 contract if it is awarded to Opus & Best. None of
20 that.

21 He creates fictitious individuals, employees
22 of Opus & Best. He has one of these fictitious
23 partners send an email to Country A attaching the
24 fraudulent bid documents that he, based on the
25 metadata for those documents, authored along with a

1 relative of his. He has a website created by that
2 relative again setting forth numerous false
3 representations as to the credentials of this Opus &
4 Best, and ultimately Country A -- again, they are a
5 young nation, inexperienced. Granted, Mr. Boye had
6 experience in this area of petroleum taxation and so
7 they relied upon his recommendation.

8 As a member of the Bid Review Committee, he
9 recommended, don't award the bid to these other
10 accounting and law firms that are much more prominent
11 that a lot of us would know. I highlyly recommend
12 Opus & Best. And the country relied on his
13 recommendation because he held a position of trust.
14 They trusted him.

15 And then what does he do? Well, he sets up a
16 bank account so that monies that are paid from Country
17 A to Opus & Best go to an account in New York that he
18 controls, and he then in no time spends the \$3.51
19 million that's paid under the consulting contract.

20 He's not just using money to feed his family.
21 No. He's buying a Rolls Royce. He's buying a
22 Bentley. He's buying an SUV. He's buying lucrative
23 rental properties, not one, but two, three multiple
24 properties. He's buying expensive watches. It goes
25 on and on. And, again, at no time is he disclosing

1 his affiliation with Opus & Best.

2 Now, Mr. Thomas has argued that, well, in
3 mitigation my client did provide some work product
4 under the consulting contract. Well, Your Honor, the
5 government would submit that was an essential part of
6 the scheme. If he had just blown it off and not
7 provided any work product, he wouldn't have gotten the
8 continuous payments under the contract. The payments
9 were not paid up front. They were paid in
10 installments based on the delivery of work products
11 and he continued to get paid because he was providing
12 some services under the contract.

13 Now, in terms of the value of those services,
14 as the government noted in its sentencing memorandum,
15 the Sentencing Commission in its creation of the
16 Commentary to Section 2B1.1 has certainly indicated
17 that where there are false representations as to the
18 licensing of particular professionals who are
19 rendering services in a particular scheme, that there
20 should be no credit for the value of services
21 provided.

22 Your Honor, that is because, the government
23 would submit, that there is a special kind of abuse of
24 trust and a special kind of manipulation that occurs
25 when an individual is posing as a trusted licensed

1 accredited individual. Here he was posing as various
2 licensed accountants who claimed were CPAs, other
3 attorneys, and he needed to create an aura of
4 expertise in order to get the contract, and then once
5 he had the contract to ensure the continued payments
6 in installments under the terms of the contract.

7 In fact, even after the \$3.51 million is paid
8 to Mr. Boye, he again impersonating a fake employee of
9 Opus & Best seeks to get paid an additional amount of
10 money in excess of \$600,000 under the terms of the
11 contract saying this is what is owed to Opus & Best.

12 He even goes so far as to try to obtain a
13 separate contract with an Opus & Best basically
14 subsidiary that he creates in Hong Kong, again, not
15 disclosing his affiliation with that Hong Kong branch,
16 if you will, of Opus & Best and trying to obtain an
17 additional contract with that country.

18 And so it just is unquestionable that the
19 offense perpetrated by Mr. Boye was serious, it was
20 meticulously planned and executed, and he undoubtedly
21 abused his position of trust and did so for greed.
22 Again, he did so for greed. He was already making
23 substantial income.

24 In fact, throughout his career he has made
25 substantial income from the various employments that

1 he's held, whether it be at the job where he embezzled
2 money and which led to his California state
3 conviction, as well as in other subsequent employment.
4 So this is certainly not somebody who had to resort to
5 fraud in order to just make ends meet. He resorted to
6 fraud to live a lifestyle beyond his means.

7 Now, in terms of the need for deterrence, your
8 Honor, the government would submit deterrence is
9 absolutely necessary in this case. Apparently, the
10 California state conviction and sentence had no
11 deterrent effect upon Mr. Boye, since just some years
12 after that, he commences this scheme and he got a
13 break there. Again, it's a 3-year sentence, he only
14 serves a part of that sentence, and gets to serve it
15 in a halfway house.

16 In addition, your Honor, some years before
17 he's censored by the New York Stock Exchange. And in
18 that case, again, elements of fraud. He had engaged
19 in trades through clients' accounts without their
20 authorization and as a result he was censored and
21 barred from any affiliation with the New York Stock
22 Exchange.

23 Again, this goes back. This is even before
24 the embezzlement from the prior employer. But it
25 shows a pattern, a life-long pattern of fraud starting

1 from the New York Stock Exchange where he was
2 censored, to the California state conviction, and
3 ultimately to his federal proceedings here in the
4 District of New Jersey.

5 And so the government submits that specific
6 deterrence is necessary as well as general deterrence.
7 Again, this country, Country A, like other small
8 countries who have been ravaged by civil war, by
9 unrest, really was in a vulnerable situation.

10 So a message needs to be sent to those who
11 look for opportunities in other countries that are
12 facing similar challenges rather than working for the
13 public good there, who seek to convert opportunities
14 to their own personal good at the expense of those
15 countries, and there needs to be a clear message that
16 will not be tolerated.

17 Turning to the history and characteristics of
18 the defendant. I've gone through his criminal
19 history, his prior instances of fraud. This is a man
20 of tremendous intellect, training and experience who
21 squandered those abilities and opportunities by
22 exploiting the trust of his employers and clients time
23 and again in order to satisfy his own personal greed.

24 So for all these reasons including the impact
25 on the victim -- and I would note for the record

1 present in the courtroom today is Ambassador Domingos
2 Sarmiento Alves. He is the U.S. Ambassador to Country
3 A who has also submitted a victim impact statement
4 which is attached as Exhibit B to the government's
5 sentencing memorandum who gives in that submission
6 just some background about Country A, its people, the
7 challenges it faced in post-colonization period and
8 its rise to independence, as well as the impact this
9 specific offense has had.

10 It weakened some of its diplomatic relations
11 with other countries, particularly, Norway which
12 actually hired Mr. Boye initially, as well as it
13 compromised some of their relationships with major oil
14 companies because the work product in this case
15 involved the generation of highly complex tax
16 regulations that the result of which is to basically
17 collect tax revenue from oil companies and other
18 entities within Country A.

19 So when you have a situation such as this
20 where the entity that was supposed to be generating
21 those tax regulations and levies was a sham, that
22 certainly puts Country A at some risk whether it be
23 litigation or just in terms of negotiating future
24 contracts and tax arrangements with these oil
25 companies.

1 So it's not such an easy situation where we
2 can say that some work product was provided and so no
3 harm, no foul essentially. Really the true impact, I
4 would say, of Mr. Boye's offense may not be known
5 today, but may have long-term consequences in terms of
6 future contractual relationships with multi-national
7 oil companies operating in Country A.

8 So for all of these reasons, your Honor, the
9 government submits that a sentence within the
10 applicable Guideline range of 63 to 78 months would be
11 appropriate in this case.

12 The government also suggests a supervised
13 release period of 3 years following any term of
14 imprisonment.

15 In terms of a fine, given the substantial
16 restitution obligations in this case, as well as the
17 forfeiture money judgment, the government would submit
18 that a fine probably should be waived in this matter,
19 so that Mr. Boye can meet his other financial
20 obligations.

21 The government thanks you for your time, your
22 Honor.

23 THE COURT: Thank you, Ms. Emehelu.

24 I'll make my comments now with regard to the
25 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

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