

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

UNITED STATES OF AMERICA	:	
	:	
v.	:	CRIMINAL NO. 04-103
	:	
KENNARD GREGG	:	
a/k/a Raymond Edward Washington	:	

ORDER-MEMORANDUM

Padova, J.

AND NOW, this 20th day of March, 2007, upon consideration of the Government's "Motion to Vacate the Defendant's Sentence and Resentence the Defendant" (Docket No. 28), the Hearing held on February 8, 2007, and the Proposed Findings of Fact and Conclusions of Law submitted by the parties, **IT IS HEREBY ORDERED** as follows:

1. The Government's "Motion to Vacate the Defendant's Sentence and Resentence the Defendant" (Docket No. 28) is **GRANTED**.
2. Defendant's Sentence, which was imposed on June 23, 2004 under the name Kennard Gregg, is **VACATED**.
3. Defendant will be **SENTENCED** on April 26, 2007 at 9:30 a.m. in Courtroom 17B, United States Courthouse, 601 Market Street, Philadelphia, Pennsylvania.
4. The Docket of this criminal action will be **AMENDED** so that Defendant's name is stated as follows: Raymond Edward Washington, a/k/a Talib Alim, a/k/a Kennard Gregg.

I. BACKGROUND

Defendant's real name is Raymond Washington. The Government has asked the Court to vacate his sentence and to resentence him because, from the time that he was arrested on charges of

knowingly selling counterfeit federal reserve notes, until after he was released from imprisonment for that crime, he used the identity of another individual, a man named Kennard Gregg. On March 22, 2004, Defendant, using Kennard Gregg's identity, entered a plea of guilty to Counts I and II of Information No. 04-103, which charged him with two counts of dealing in counterfeit obligations in violation of 18 U.S.C. § 473. Defendant was sentenced on June 23, 2004, under the identity of Kennard Gregg. The Total Offense Level for this offense is 9. Kennard Gregg's prior criminal convictions resulted in three criminal history points and a Criminal History Category of II. The Guidelines sentencing range for a Total Offense Level of 9 and a Criminal History Category of II is 6 - 12 months. U.S. Sentencing Guidelines Manual, ch.5 pt. A (2003). Defendant was sentenced as Kennard Gregg to six months imprisonment, three years of supervised release, restitution of \$350.00 and a \$200 special assessment.

Defendant served his period of imprisonment and admitted his real identity to his probation officer when he started supervised release. According to the Presentence Investigation Report bearing a revision date of March 16, 2006 (the "Revised PSI"), at the time of his sentencing in this case, Raymond Washington had nine prior criminal convictions, which would have resulted in eight criminal history points and a Criminal History Category of IV on June 23, 2004. (Revised PSI ¶¶ 26-53.) The Guidelines sentencing range for a Total Offense Level of 9 and a Criminal History Category of IV is 12 - 18 months imprisonment. U.S. Sentencing Guidelines Manual, ch.5 pt. A (2003).

Defendant opposes this Motion on two bases: (1) Defendant contends that we lack jurisdiction to vacate his sentence and resentence him and (2) Defendant maintains that he did not defraud the Court. On October 3, 2006, we found that we have jurisdiction to vacate a sentence

based on fraudulent information submitted by a defendant and to impose a new sentence based upon accurate information.¹ (October 3, 2006 Memorandum at 8.) On February 8, 2007, a Hearing was held to determine whether there is a factual basis to vacate Defendant's sentence.

II. DISCUSSION

The evidence before the Court establishes that Defendant's sentence was based on fraudulent information provided by Defendant. During the February 8, 2007 Hearing, Defendant's United States Probation Officer, Tomas Adamczyk, testified about admissions that Defendant made regarding his use of the name Kennard Gregg. (2/8/07 N.T. at 12-34.) We find that Adamczyk's testimony was credible. Defendant met with Adamczyk on January 11, 2006 and told Adamczyk that he is not Kennard Gregg. (Id. at 15.) Defendant informed Adamczyk that his real name is Talib Abdul Alim and that his birth name was Raymond Washington. (Id.) Defendant also admitted that he knew Kennard Gregg and that he used Gregg's Veteran's Administration ("VA") identity card in order to obtain free methadone treatment at the VA Hospital.² (Id. at 16-17.) Adamczyk has since learned that Defendant has never served in the military. (Id. at 17.) Defendant also told Adamczyk that, once he was arrested on the federal charges of selling counterfeit federal reserve notes, he continued using Kennard Gregg's identity because he knew that there was a New Jersey state parole warrant for Talib Alim and he believed that, as long as his real identity was unknown, the parole

¹Defendant appealed this Order. His appeal was dismissed for lack of jurisdiction on November 9, 2006.

²Defendant has also admitted to the Court that, at the time of his arrest, he had a VA identification card in the name of Kennard Gregg. (Dft's Proposed Findings of Fact ¶ 2.)

warrant could not be executed and he could avoid serving additional time in prison on that warrant.³
(2/8/07 N.T. at 17.)

On March 22, 2004, Defendant appeared before us to enter a plea of guilty to the charges contained in Information No. 04-103. After Defendant was sworn to tell the truth, he was asked to state his name for the record. He replied, under oath, “Kennard Gregg.” (3/22/04 N.T. at 2.) Defendant also stated, under oath, that he was taking medication given to him by a psychiatrist for mental illness, for “seeing and hearing things.” (Id. at 3.) Following his guilty plea, Defendant continued using Kennard Gregg’s identity in preparation for his sentencing. United States Probation Officer Mayra Marrero prepared the initial Presentence Investigation Report (the “PSI”) with respect to the Defendant. Defendant gave Marrero false information regarding his family for use in the PSI. (2/8/07 N.T. at 21.) Defendant told Marrero that he had two brothers who each died as the result of a heroin overdose. (PSI ¶ 50.) Marrero found that Defendant had previously reported to a Pretrial Services Officer that his father and two of his brothers live in North Philadelphia, another brother lives in New Jersey and his sister lives in Virginia. (Id. ¶ 51.)

Defendant’s use of the identity of Kennard Gregg continued during his sentencing. Defendant did not object, during his sentencing, to being referred to as Kennard Gregg. (6/23/04 N.T.) Defendant was sworn, using the name Kennard Gregg. (6/23/04 N.T. at 3.) Defendant objected to Paragraph 51 of the PSI, which stated that his father and four siblings were alive. (Id. at 5.) Defendant, through counsel, made the following objection to that paragraph: “My client does

³The United States Bureau of Prisons learned of Defendant’s real identity while he was serving his sentence in this case. (2/8/07 N.T. at 18.) The New Jersey state parole office was notified and, after Defendant was released from federal custody on January 3, 2005, he was placed in the custody of New Jersey to serve his sentence for his parole violation. (Id.)

not recall telling the pretrial services officer any of - - that his - - any of his siblings, or his father, were still alive. They - - he doesn't know where his father is. He doesn't know whether he's alive or not. His two brothers and sister are definitely deceased.” (Id. at 5.) After learning of Defendant's real identity, Adamczyk met with one of Defendant's living brothers and learned that none of Defendant's siblings have died of a heroin overdose. (2/8/07 N.T. at 21-22.) According to the Revised PSI, Defendant's father died of a heart attack in 2005 and he has four living siblings, two brothers and two sisters. (Revised PSI ¶ 68.) Defendant's reported history of mental health problems was also discussed during his sentencing. (6/23/04 N.T. at 8, 16-18.) Indeed, one of the conditions of supervised release placed on Defendant as part of his sentence was that he “be placed in a residential mental health program for a period of at least one month” (Id. at 19.) Defendant did not object to the mention of his reported history of mental health problems. However, Defendant informed Adamczyk on January 11, 2006 that one of the reasons he was telling the truth about his identity was that he was not mentally ill and did not want to spend time in a mental institution as ordered by the Court as part of his supervised release. (2/8/07 N.T. at 20.)

We find that Defendant intentionally provided false information to the Court in connection with his sentencing. Defendant intentionally and continuously used the identity of Kennard Gregg following his arrest in order to avoid a warrant for his arrest on a New Jersey probation violation. Defendant intentionally provided false information regarding his personal and family history to the probation officer and to this Court during his guilty plea and sentencing hearings, information that we considered in connection with Defendant's sentencing. We conclude that Defendant's sentence was based on fraudulent information submitted by Defendant. The Government's Motion is, accordingly, granted and Defendant's sentence is vacated. Defendant will be resentenced, based

upon accurate information, on April 26, 2007.

BY THE COURT:

/s/ John R. Padova

John R. Padova, J.