

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

UNITED STATES OF AMERICA	:	CRIMINAL ACTION
	:	
vs.	:	
	:	
JOHN NALESNIK	:	NO. 06-00283-GP

GENE E.K. PRATTER, J.

MARCH 2, 2007

MEMORANDUM AND ORDER

BACKGROUND

Charged by way of an information with one count of embezzlement in violation of 18 U.S.C. § 656, Defendant John Nalesnik admitted his guilt. At a sentencing hearing on January 23, 2007, the Court sentenced Mr. Nalesnik to 24 months incarceration; four years of supervised release, the first six months of which are to be served at a community correction center, and with an annual community service obligation; restitution; and a \$100 special assessment. He now asks the Court to reconsider the inclusion in the supervised release aspect of his sentence the 6 months in the community correction center.

DISCUSSION

Over a period of more than three years, from 2001 to 2004, while he worked at Wachovia Bank, Mr. Nalesnik embezzled more than \$600,000 from the Bank. He used the stolen money for personal acquisitions and expenses, including paying off his credit card charges and for on-going household obligations for his former wife and son, as well as for himself and his current

companion.

Once his conduct was exposed, Mr. Nalesnik admitted his crime, and, eventually, he began to make restitution repayments to the Bank. By the time of sentencing, Mr. Nalesnik still owed the Bank approximately \$305,000. Mr. Nalesnik had no prior criminal history.

The Court conducted a sentencing hearing on January 23, 2007. In advance of the hearing, the Court received and reviewed a very thorough pre-sentence report, a sentencing memorandum from the government, a sentencing memorandum from the defense, a host of very informative letters from friends and family of the Defendant and a rudimentary business plan prepared by Mr. Nalesnik by which he hoped to explain how he planned to continue to develop his home repair and maintenance business, deal with his personal and familial financial obligations and make regular restitution payments to Wachovia Bank. During the sentencing hearing, the Court invited remarks from counsel and Mr. Nalesnik, as well as from Mr. Nalesnik's victim and his supporters.

As part of the sentencing process, the Court determined, without objection, the appropriate Sentencing Guideline calculations. Specifically, with a total offense level of 20 and a criminal history category of I, the Sentencing Guidelines presented a period of incarceration for Mr. Nalesnik of between 33 and 41 months, no eligibility for probation, a period of supervised release of between three and five years, a fine of between \$7,500 and \$1 million, a special assessment of \$100 and, of course, full restitution of the remaining \$304,791.79.¹

The Court considered and easily could have imposed a sentence of 30 months

¹The applicable statutory authority permitted a sentence of up to 30 years in custody, forbade probation, allowed supervised release for as long as five years, along with a \$1 million fine, as well as the same special assessment and restitution.

incarceration or more in a conventional Bureau of Prisons institution. However, even though Mr. Nalesnik's remarks to the Court included no less than three self-initiated candid reflections of his view of his own primary importance,² the Court specifically investigated various options that could facilitate Mr. Nalesnik's readying himself for a complete return to the community and productive, income-producing activities so that he could resume restitution payments as ordered by the Court, but without unduly compromising the Court's conclusion as to what level of deprivation of liberty was fair and reasonable in this case. As a result, the Court fashioned a slightly below Guidelines sentence of 24 months of incarceration, to be followed by four years of supervised release, with the first 6 months to be served at a community correction center. In addition, during each year of supervision Mr. Nalesnik is to perform no less than 100 hours of community service for organization(s) such as Habitat for Humanity. The Court also ordered Mr. Nalesnik to make full restitution to Wachovia Bank (payable in \$300 monthly installments commencing after his release from custody) and pay the \$100 special assessment. In view of the significance of the restitution obligation and Mr. Nalesnik's reported current, extremely modest personal financial picture, the Court determined to forego imposition of any fine and waived the accrual of interest on the restitution obligation.

The Court can only assume that Mr. Nalesnik misapprehends the Court's and society's consideration of the severity of his crimes and the appropriateness of the punishment delineated, as compared to Mr. Nalesnik's self-directed concern of how he will find it "difficult to serve this lengthy sentence knowing [he has] to serve yet another six months in a community correction center upon release," as he states in his Motion. To be sure, the Court recognizes that, like surely

²See Hearing of January 23, 2007 Transcript, N.T. 22 l. 22; 23 l. 5; 41 l. 5.

every criminal sentenced to some form of incarceration, Mr. Nalesnik would wish for some kind of amelioration. Moreover, and also like some defendants contemplating the commencement of a period of incarceration, Mr. Nalesnik may not sufficiently appreciate how that period could well have been set to run longer than the Court ultimately determined would be fair and reasonable and no longer than necessary to satisfy the goals of sentencing.

Mr. Nalesnik presents no unique feature of himself, nor any flaw in the Court's sentencing procedures to prompt the Court to reconsider the sentence as imposed,³ and the Court declines to do so.

BY THE COURT:

Gene E.K. Pratter
United States District Judge

³One reason given by Mr. Nalesnik for the Court to grant his motion is that the service of his first 6 months of supervised release in a community correction center “may adversely impact the discretionary decision of the Bureau of Prisons to release Mr. Nalesnik into a community correction center as part of the original sentence.” Mot. ¶ 8. Not only does the Court recognize that the Bureau of Prisons quite properly pursues its own policies and procedures without having the Court try to manipulate how it exercises its discretion, but Mr. Nalesnik presents no rational basis on which the Court could conclude that this Court-imposed condition of supervised release will have any positive or negative effect on the Bureau of Prisons at all. However, the Court notes that it volunteered, sua sponte, to recommend to the Bureau that Mr. Nalesnik be released to a community correction center at his 10% date. Tr. N.T. 53.

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ORDER

AND NOW, this 2nd day of March, 2007, upon consideration of the Defendant's Motion for Reconsideration of Sentence and the letter response on behalf of the Government, it is hereby **ORDERED** that the Motion is **DENIED**.

BY THE COURT:

Gene E.K. Pratter
United States District Judge