



U.S. Department of Justice

*United States Attorney
Eastern District of New York*

JEG
F.#2005R00207

*271 Cadman Plaza East
Brooklyn, New York 11201*

December 8, 2009

By ECF

The Honorable Raymond J. Dearie
Chief United States District Judge
Eastern District of New York
225 Cadman Plaza East
Brooklyn, New York 11201

Re: United States v. Mamie Manneh
Criminal Docket No. 06-248 (RJD)

Dear Judge Dearie:

The government respectfully writes concerning the defendant Mamie Manneh's sentencing, presently scheduled for December 11, 2009, at noon. As set forth below, the government (1) objects to the Probation Department's calculation of Manneh's Sentencing Guidelines range insofar as the Presentence Investigation Report (the "PSR") awards Manneh a two-point reduction for acceptance of responsibility, (2) opposes Manneh's request for a below-guidelines sentence and (3) opposes Manneh's request that her sentence in this case run concurrent to her sentence for Assault in the Second Degree.

I. Facts

Manneh, a Staten Island resident, was in the business of importing items from Africa, including smoked fish, dresses and bushmeat. The bushmeat consisted mostly of primate parts. Manneh resold these items from her home. In an effort to ensure that a shipment of bushmeat, that included primate parts, was permitted into the United States, Manneh lied to a freight forwarder about the contents of the shipment, knowing that that lie would be passed on to relevant federal authorities. Federal law enforcement authorities intercepted one such shipment, learned of its contents, and began an investigation.

In connection with this investigation, United States Fish and Wildlife ("USFWS") Agents interviewed Manneh and searched her home on consent. During the course of the interview

and search, Manneh falsely represented to USFWS agents that she had never seen bushmeat before in the United States and did not know that the shipment at issue contained bushmeat or primate parts. Manneh later confessed to some of these lies after agents found other bushmeat in her garage.

Manneh was indicted on a smuggling charge on April 13, 2006. After nearly a year of adjournments at Manneh's request, Manneh interposed a defense pursuant to the Religious Freedom Restoration Act of 2000 ("RFRA"). On December 31, 2008, the Court denied Manneh's motion to dismiss the indictment pursuant to RFRA. United States v. Manneh, 645 F. Supp. 2d 98 (E.D.N.Y. 2008). In denying this motion, the Court found, among other things, that Manneh perjured herself when she testified in support of her motion. Id. at 113-14.

On September 8, 2009, Manneh pled guilty to a one count information charging smuggling in violation of 18 U.S.C. § 545. The Probation Department calculated Manneh's Sentencing Guidelines range as follows:

Base Offense Level (2Q2.1(a))	6
Plus: Offense committed for pecuniary gain or otherwise involved a commercial purpose, or involved a pattern of similar violations (2Q2.1(b)(1))	+2
Plus: Offense created a significant risk of infestation or disease transmission potentially harmful to humans, fish, wildlife, or plants (2Q2.1(b)(2)(B))	+2
Plus: Obstructing or Impeding the Administration of Justice (3C1.1)	+2
Less: Adjustment for Acceptance of Responsibility (3E1.1)	-2
Total:	<u>10</u>

Manneh does not oppose this calculation. Thus, the only dispute is whether Manneh should be awarded a two-level reduction for acceptance of responsibility.

II. Manneh Should Not Be Awarded A Two-Level Reduction For Acceptance Of Responsibility

The law is clear that a defendant who is assessed an increase in her Guidelines level for Obstruction Of Justice may not simultaneously be awarded a decrease for Acceptance Of Responsibility. As Application Note 4 to U.S.S.G. § 3E1.1 states, "Conduct resulting in an enhancement under § 3C1.1 (Obstructing or Impeding the Administration of Justice) ordinarily indicates that the defendant has not accepted responsibility for his criminal conduct. There may, however, be extraordinary cases in which adjustments under both §§ 3C1.1 and 3E1.1 may apply."

"Whether the defendant has accepted responsibility is a factual question, and a district court's determination in this regard should not be disturbed unless it is without foundation." United States v. Taylor, 475 F.3d 65, 68 (2d Cir. 2007). "A guilty plea does not, by itself, entitle a defendant to a reduced sentence under § 3E1.1." United States v. Irabor, 894 F.2d 554, 557 (2d Cir. 1990). For example, in United States v. Tavaréz, the court held that "although entering a plea of guilty before the start of trial constitutes 'significant evidence of acceptance of responsibility,' that evidence was outweighed by the fact that Tavaréz had obstructed justice by committing perjury several times. The Court held that this was not an 'extraordinary case' that would justify simultaneous upward and downward adjustments for obstruction of justice and acceptance of responsibility, respectively." 151 F. Supp. 2d 274, 279-80. (S.D.N.Y. 2001). Thus, despite Tavaréz's guilty plea, he was denied a reduction for acceptance of responsibility. See also United States v. Acevedo-Garcia, 2009 WL 2143232 (2d Cir. July 16, 2009), (affirming an enhancement for obstruction of justice and denial of acceptance points where the defendant provided a false name at his plea colloquy); United States v. Matos, 907 F.2d 274 (2d Cir. 1990) (affirming an enhancement for obstruction of justice and denial of acceptance points where the defendant lied at his suppression hearing despite the defendant's subsequent consent to a bench trial on stipulated facts).

Here, it is not disputed that Manneh perjured herself and should therefore be assessed a two-point enhancement for obstruction of justice. Moreover, there is nothing "extraordinary" about this case that warrants simultaneous application of these two conflicting Sentencing Guidelines provisions. Manneh's perjury in support of her motion to dismiss the instant indictment was obviously designed to avoid conviction in the instant case. This obstruction requires that no

acceptance points be awarded, even in light of Manneh's later guilty plea.

III. Manneh's Motion For A Below-Guidelines Sentence Should Be Denied

Manneh argues for a downward departure or non-guidelines sentence based on her personal history. In support of this motion, Manneh cites her social history and a diagnosis of "mild mental retardation."¹ While the government is not in a position to dispute Manneh's recounting of her own personal history, or the diagnosis of mild mental retardation, none of these circumstances bear any relationship to the crime Manneh committed, and are therefore of limited, if any, relevance at sentencing.

Absent from Manneh's submission is any explanation of how her alleged circumstances or diminished mental capacity relate in any way to the charged crime. See United States v. Valdez, 426 F.3d 178, 184 (2d Cir. 2005) ("There must also be a causal link between the diminished capacity and the charged offense."). There is no question that, her personal circumstances notwithstanding, Manneh understood it was wrong to lie on a customs form in an effort to smuggle bushmeat into the country, just as there is no question that Manneh understands it is wrong to lie under oath or attempt to kill two people with an SUV.²

In addition, as recognized by the Court in its prior decision, Manneh's crime and perjury demonstrate that she is not the unsophisticated individual she now purports to be. One particular feature of Manneh's perjury warrants significant consideration for sentencing purposes:

¹ In his report, Dr. Leo J. Shea, III indicated that, based on his test results, Manneh had an IQ of 56, which placed her in the "Mild Mental Retardation range." However, Dr. Shea also notes that "tests [sic] results should be viewed with caution as no specific norms are published for Liberian nationals...." Dr. Shea ultimately concludes that Manneh's test "results can be considered an adequate representation of her functional capacity at the present time." Manneh Sentencing Letter, Exhibit B at 2.

² Far from a crime of passion, the evidence of this incident demonstrates that Manneh waited in her SUV outside a movie theater for her victims to appear.

Q Isn't it true that you told Special Agent Alegranti that you never seen bushmeat before in the United States?

A I was going through a lot, a lot, because when he came to my house he put his hand on his gun. My daughter had just got burned in the third degree. He saw that I was in the hospital when he called me from the hospital to come. I was scared so I lied to him.

Tr. November 13, 2007 at 6 - 9.

While the above excerpt is not the only example of Manneh's perjury, it does demonstrate what the court referred to as "the alarming level of calculation and dissembling displayed by defendant on the witness stand..." Manneh, 645 F.Supp. 2d at 113. This perjury is relevant not only to the obstruction enhancement, but to Manneh's level of sophistication. The calculated lie told on the witness stand provides the Court with a glimpse of Manneh's true mental state.

There is also no question that Manneh has no regard for the law, as demonstrated by her numerous arrests and convictions (one of which occurred while Manneh was on bail in this case). Taken separately, a conviction for shoplifting is certainly not cause for alarm; taken together, Manneh's seven arrests and convictions for shoplifting-type crimes demonstrate a disturbing disregard for the law. Moreover, as the PSR indicates at paragraphs 39 and 49, Manneh engaged in at least some of this conduct in concert with others. Notably, during the search of Manneh's garage conducted in this case, USFWS agents observed boxes of new clothes with tags still attached. In addition to the significant quantity of clothing, the agents observed large numbers of duplicate articles of clothing and hardware supplies (exact same brand, style, and color) as one might see on a display rack or shelf at a retail store. These clothes were a few yards from where Manneh sold smoked fish, and in the same garage as the bushmeat Manneh sells. Thus, it is clear that the defendant steals clothing and resells it.

The Sentencing Guidelines appropriately take into account Manneh's criminal history and her crime of conviction. The government does not reflexively advocate for a Guidelines sentence in this case, but does so with appropriate regard for the family circumstances cited by the defendant. On balance, the Guidelines range of 21 to 27 months is a reasonable one for this defendant and this crime. The government takes no position as to

where within the advisory Guidelines range Manneh should be sentenced.

IV. Manneh's Sentence Should Not Be Concurrent
To Her State Sentence For Assault

The instant conviction has nothing whatsoever to do with the defendant's state court conviction for assault in the second degree. The defendant cites no reason, in law or logic, to have her present sentence run concurrently with her state sentence. These are separate crimes warranting separate punishment.

V. Conclusion

For the reasons set forth herein, Manneh should be sentenced to a term of incarceration between 21 and 27 months, with no credit for time served on her state conviction.

Respectfully submitted,

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