

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

1,20

OLSEN/GeoK

UNITED STATES OF AMERICA,)
Plaintiff,)
v.) Criminal Case No. 78-367
GUILLERMO NOVO SAMPOL,)
Defendant.)

Washington, D. C.
Friday, June 26, 1981

The above-entitled action came on for sentencing before the Honorable BARRINGTON D. PARKER, United States District Court Judge, in Courtroom No. 19, commencing at approximately 10:10 o'clock, a.m.

APPEARANCES:

For the Plaintiff:

E. LAWRENCE BARCELLA, JR., ESQ.
Assistant United States Attorney
Deputy Chief, Major Crimes Division
4401 United States Courthouse
Washington, D. C. 20001

and

CARL FELDMAN, ESQ.
H. LOWELL BROWN, ESQ.
Assistant United States Attorneys
United States Courthouse
Washington, D. C. 20001
(202) 633-1708

M. EUGENE OLSEN. C.S.R
OFFICIAL REPORTER, U. S. DISTRICT COURT
UNITED STATES COURTHOUSE
WASHINGTON, D.C. 20001

~~XXXXXXXXXX~~

(202) 755-1920

Epheliet A

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

APPEARANCES (continued):

For the Defendant:

✓ PAUL GOLDBERGER, ESQ
Goldberger, Feldman & Dubin
401 Broadway
New York, New York 10013
(212) 431-9380

For the Probation Office:

MR. ARTHUR CARRINGTON
MR. CLIFFORD KADON

P R O C E E D I N G S

1
2 THE DEPUTY CLERK: United States of America v.
3 Guillermo Novo Sampol, Criminal No. 78-367.

4 Mr. Barcella, Mr. Feldman and Mr. Brown represent
5 the Government. Mr. Goldberger represents the defendant.

6 Mr. Carrington and Mr. Kadon are here for the Pro-
7 bation Office.

8 THE COURT: All right. Have the defendant come
9 forward.

10 [Guillermo Novo steps forward accompanied by his
11 attorney, Mr. Goldberg.]

12 MR. GUILLERMO NOVO: Yes, Your Honor.

13 THE COURT: You are before the Court this morning
14 for purposes of sentencing, but, first, Mr. Goldberger has
15 presented a motion to the Court for reassignment of this
16 proceeding to another court for purposes of sentencing.

17 Mr. Goldberger, what do you wish to say beyond
18 what you have already said not only in connection with this
19 motion, but in connection with an earlier motion?

20 MR. GOLDBERGER: Nothing really, Judge, except
21 just for the record to indicate that I think the Judge is
22 just a human being like anybody else, and it would be most
23 difficult for Your Honor, considering Your Honor sentenced
24 this defendant to two life sentences in the first case, only
25 to be able to consider the perjury count now and put aside

1 the cases involving the murder case.

2 I would suggest to the Court that it might be better
3 that this Court send this case to another judge for sentence
4 in regard to the perjury count, so that can be decided inde-
5 pendently, free of any possible taint that the Judge might
6 have in his mind from all the factors that he has heard.

7 THE COURT: Do you think I exhibited any taint
8 or any bias during the last proceeding?

9 MR. GOLDBERGER: I think, Judge, without getting
10 into personalities -- I think that you exhibited only the
11 natural bias and prejudice of a man that -- or a judge that
12 felt that the defendant was guilty based on the fact you
13 said at the previous sentence proceeding the defendant was
14 guilty, and I think it is very hard for a man to put that
15 out of his mind, what he may truly and honestly feel.

16 The jury has spoken in this case, and I think it
17 is difficult for Your Honor to put out of his mind what Your
18 Honor felt before and what Your Honor heard based on the
19 first case.

20 THE COURT: Well, I don't want to labor the point,
21 but other than the generalities that you expressed, can you
22 point to anything specific?

23 MR. GOLDBERGER: No, Judge, I have nothing through
24 the record of this past proceeding in order to elaborate
25 on the motion that we have made.

1 I feel that Mr. Novo is entitled to be sentenced
2 by another judge, and that is the motion we filed.

3 THE COURT: Very well. The motion is denied.

4 Now, Mr. Novo and Mr. Goldberger, Mr. Novo is before
5 the Court this morning for purposes of sentencing, and he
6 was found guilty by a jury after several hours, at least
7 several days of considered and intelligent deliberation as
8 far as I can perceive, guilty of two counts of the indictment,
9 charging Mr. Novo with false declarations under Title 18,
10 false declarations before a grand jury under section 1623
11 of Title 18, United States Code.

12 Mr. Goldberger, is there anything you want to say?

13 MR. GOLDBERGER: Yes, Judge, several things.

14 First of all, as I am sure Your Honor sees, the
15 courtroom is filled with the friends and members of Mr. Novo's
16 community in the area in which he lives. They came down
17 by bus this morning to express to the Court by their appearance
18 their feelings in regard to Mr. Novo, and I think the attend-
19 ance here speaks for itself.

20 Let me say, Your Honor, that Your Honor sentenced
21 Mr. Novo on the perjury counts at the end of the first trial
22 to five years on each count to run concurrently.

23 I believe the law is clear that since there are
24 no changed circumstances since the first trial, actually
25 the only changed circumstances are to Mr. Novo's benefit,

1 that is, that he was acquitted of the more serious counts.

2 Your Honor allowed him out on bail. He met all
3 the conditions of Your Honor's bail commitments, and I would
4 suggest to the Court that the only conditions that have changed are
5 to Mr. Novo's benefit, and so therefore under any circumstances
6 under North Carolina v. Pearce, I believe that would be the
7 maximum sentence you could impose on defendant, the same
8 sentence you imposed the last time.

9 THE COURT: Would a consecutive sentence be an
10 enhanced sentence?

11 MR. GOLDBERGER: Yes, I believe so in this case,
12 Judge, absolutely.

13 THE COURT: Have you read the Government's memorandum?

14 MR. GOLDBERGER: I have, Judge. They cite the
15 same case I do, interestingly enough.

16 THE COURT: Pearce?

17 MR. GOLDBERGER: North Carolina v. Pearce. That
18 is the only case they cite, and they cite it in a footnote.

19 If Your Honor were to sentence Mr. Novo to more
20 than the sentence that you sentenced him to at the first
21 case, you would, in effect, be punishing him for taking an
22 appeal.

23 There is no ground for him to get more time than
24 he was sentenced to in the first case.

25 He got five years on one count, five years on the

1 other to run concurrently. He has done nothing in the interim
2 except be in jail and then be acquitted on the other counts
3 and then meet Your Honor's commitments regarding the bail
4 that would allow Your Honor to enhance the sentence that
5 Your Honor gave at the first trial.

6 Let me say this, Judge. Mr. Novo -- we cited in
7 our sentence memorandum to the Court, the United States Attorney'
8 Office in the Southern District of New York did a sentencing
9 study on perjury cases.

10 50 percent of those people convicted in that district
11 were sentenced to no time, no incarceration on the perjury
12 counts they were convicted of.

13 And the other 50 percent that were sentenced to
14 incarceration received an average period of incarceration,
15 that is, the period that is imposed, not the time done, of
16 5.2 months.

17 THE COURT: Oh, but, Mr. Goldberger, you can't
18 determine a sentence to be imposed on the basis of statistics.
19 Each case stands on its own bottom.

20 MR. GOLDBERGER: I agree, Judge.

21 THE COURT: Here we have a background as far as
22 your client is concerned ---

23 MR. GOLDBERGER: I agree, Judge.

24 THE COURT: 50 percent and 50 percent doesn't indicate
25 to me at all what happened in the Southern District as far

1 as the individual cases were concerned.

2 MR. GOLDBERGER: Granted, Judge, and what I want
3 to bring to the Court's attention is that Mr. Novo served
4 three years, and you know, Judge, when a man is sentenced
5 on a perjury case where a maximum sentence is five years
6 on any particular perjury count, he is generally incarcerated
7 at a medium- or even a minimum-security institution.

8 Mr. Novo did the majority of those years at the
9 maximum block at a maximum institution in this country, which
10 is Leavenworth, so when Your Honor sentences him now, I would
11 ask Your Honor to take into consideration that he did pretty
12 much three years at one of the two maximum-security institu-
13 tions in this country.

14 And I think that is a lot further punishment than
15 the normal person gets under a perjury ---

16 THE COURT: Are you saying that the conditions
17 of the street are much more severe?

18 MR. GOLDBERGER: No question about that, Judge.
19 Conditions for a person incarcerated at a maximum institution
20 in this country differ greatly from those -- for instance,
21 if Mr. Novo had been convicted of perjury along back at the
22 end of the first trial, he probably would have served his
23 time at a medium- or minimum-security institution, perhaps
24 something like Danbury or even the Lewisburg farm where he
25 would have been allowed certain privileges, privileges that

1 he was not allowed at Leavenworth.

2 He was kept in maximum security during the entire
3 period of time he was at Leavenworth. And I would ask Your
4 Honor to consider that.

5 Judge, the three years that he did at Leavenworth,
6 if Your Honor sentences him to the same sentence you gave
7 the last time, he would max out on that sentence on a five-
8 year sentence in four months.

9 I would ask Your Honor, if Your Honor sees fit
10 to impose a prison sentence, to impose a prison sentence
11 of time served on Mr. Novo.

12 From reading the probation report, Judge, the salient
13 factor score, which is at the end of the probation report
14 that I read, indicates that on this type of conviction the
15 defendant would probably serve somewhere between 14 and 18
16 months in jail.

17 That is what the probation report indicates that
18 the salient factor score would indicate.

19 I suggest to the Court that Mr. Novo has done double
20 that already in jail. And I don't see any need -- there
21 should come a time, Judge, when there is an end to the proceedings
22 and it seems to me this should be the end of the proceedings.
23 And if Your Honor sees fit to impose a jail sentence now
24 that Your impose a sentence of time served.

25 Let me say something else, Judge.

1 There is the possibility if Your Honor imposes
2 the same sentence you did last time, I would ask Your Honor
3 to designate Mr. Novo to a halfway house in Newark called
4 the Pyramid House so that he can ---

5 THE COURT: What is it called?

6 MR. GOLDBERGER: Pyramid House. It is under a
7 Federal program.

8 There are a number of halfway houses in the United
9 States, Judge, and the purpose of those halfway houses is
10 to integrate the individual from jail back into the community.

11 As Your Honor knows from the letters that Your
12 Honor received as part of our sentencing memorandum, Mr.
13 Novo has the opportunity now to work for a man named Mr.
14 Monzon, who owns a string of apparel stores. Mr. Monzon
15 is present today in court, Judge, and one of the members
16 of the committee who bailed for Mr. Novo.

17 As the letter indicates, he is fully ready, willing
18 and able to employ Mr. Novo in a managerial capacity. The
19 report itself indicates, Your Honor, that Mr. Novo is
20 articulate. He is bright, and he has had a good work record,
21 and he would like very much to get back into the community
22 and start working again, and he has that job offer.

23 I would say to the Court that based on everything
24 that has happened, Your Honor, that Mr. Novo has done the
25 time in this case already, and I would ask Your Honor to

1 sentence him to time served.

2 THE COURT: Anything else you want to say?

3 MR. GOLDBERGER: No, I don't think so, Judge.

4 THE COURT: Mr. Goldberger, you are usually not
5 at a loss for words.

6 MR. GOLDBERGER: Well, Judge, quite frankly I just
7 feel that the three years is more than he would have done
8 on a perjury case.

9 He would have been paroled at a much earlier period
10 of time, and he has done the three years, and I don't see
11 the point of sending him back to jail now.

12 THE COURT: Very well. Is there anything you wish
13 to say?

14 MR. GUILLERMO NOVO: No, Your Honor.

15 THE COURT: Mr. Barcella.

16 MR. BARCELLA: Your Honor, first of all, with respect
17 to whether the Court can impose consecutive sentences, the
18 United States feels that clearly the Court can do that.

19 THE COURT: How could I do it under Pearce?

20 MR. BARCELLA: Under Pearce you could do it very
21 simply, Your Honor.

22 At the time the Court initially imposed the sentence
23 in March of 1979, the Court had five other counts under which
24 it sentenced the defendant.

25 Obviously the Court expressed at the time of

1 sentencing, and the Court clearly had a sentencing scheme
2 in mind. The Court sentenced the defendant to consecutive
3 life terms on each of the homicides.

4 It then sentenced the defendant concurrently with
5 each false declaration, but consecutively to the murders.
6 In other words, at that point having sentenced the defendant
7 consecutively to the life terms ---

8 THE COURT: Mr. Barcella, what do you find in Pearce
9 that would allow this Court, keeping in mind what Justice
10 Stewart said, to impose consecutive sentences which would
11 be a greater sentence than that which was originally imposed?

12 What do you find in Pearce?

13 MR. BARCELLA: I find, Your Honor, the Court saying
14 that, first of all, that a more severe sentence is permitted.
15 The Court didn't say you could not impose a more severe sen-
16 tence.

17 It said the double jeopardy did not protect that.
18 It said equal protection did not protect that.

19 It said there were due process considerations,
20 and what the due process considerations were that the Court
21 could not be vindictive in sentencing a defendant more
22 harshly simply because he availed himself of his right to
23 appeal.

24 That is the standard that the Supreme Court said
25 that a court must be guided by in a second sentencing.

1 THE COURT: Do you have the opinion before you?

2 MR. BARCELLA: Yes, I do, Judge.

3 THE COURT: Turn to page 726, the last paragraph
4 or the last several paragraphs. And that is where Justice
5 Stewart said, in part, "We conclude that whenever a judge
6 imposes a more severe sentence upon a defendant after a new
7 trial, the reasons for his doing so must affirmatively appear.
8 Those reasons" -- and this is what I construe as being very
9 important -- "Those reasons must be based upon objective
10 information concerning identifiable conduct on the part of
11 the defendant occurring after the time of the original sen-
12 tencing proceeding, and the factual data upon which the increased
13 sentence is based must be made part of the record so that
14 constitutional legitimacy of the increased sentence may be
15 fully reviewed on appeal."

16 Now, of course, he also said in the opinion that
17 there is no absolute conditional bar to imposing a more severe
18 sentence on reconviction.

19 But tell me this. What is the objective information
20 concerning identifiable conduct on this defendant's part
21 occurring after the time of the original sentencing proceeding?

22 MR. BARCELLA: First of all, Your Honor, what the
23 Court read, that sentence that the Court started reading
24 began with an order to assure the absence of such a motivation
25 which referred to the paragraph, the sentence above it, which

1 says that the due process of law ---

2 THE COURT: You are saying I am taking it out of
3 context?

4 MR. BARCELLA: Yes, Your Honor, I think that the
5 Court is because what it says is that due process of law
6 then requires that vindictiveness against the defendant for
7 having successfully attacked his first conviction must play
8 no part in the sentences he receives after a new trial, and
9 since the fear of such vindictiveness may unconstitutionally
10 deter a defendant's exercise of the right to appeal or collater-
11 ally attack his first conviction, due process also requires
12 that a defendant be free of apprehension of such retaliatory
13 motivation on the part of the sentencing judge.

14 That is what precedes that. In other words, the
15 Court is saying that it is vindictiveness that they are trying
16 to avoid. It is the fear that a defendant will not exercise
17 his right to appeal that the Supreme Court is trying to prevent.

18 It is not the imposition of the harsher sentence,
19 and to suggest that the defendant being consecutively sentenced
20 to the two perjuries is harsher than the sentence imposed
21 on the first time is simply to ignore mathematics.

22 He was sentenced by the Court to a sentencing scheme
23 which included consecutive sentences on the murders. The
24 perjuries were moot at that point, Your Honor. He would
25 have gotten -- he would have received some 30 years before

1 he was eligible for parole on the murders under the Court's
2 last sentencing scheme before the false declarations count
3 even came into play.

4 There can be no question, Your Honor, but that
5 the vindictiveness is not an issue here, and that he cannot
6 be sentenced more harshly by the Court. He exercised his
7 right to appeal, and in the exercise of that right he had
8 his case reversed and remanded for retrial where the counts
9 that would have gotten him a life sentence were, in fact,
10 the subject of the acquittal by the jury.

11 If the defendant had been convicted of all counts
12 by the second jury and the Court sought to consecutively
13 sentence him or sentence him more harshly than the sentence
14 imposed last time, that is to more than double lives with
15 a consecutive five years' false declarations terms, then
16 there might be an argument that the defendant's rights under
17 Pearce had been violated.

18 But that is not the case here. That is not the
19 case.

20 The Court is physically and mathematically incapable
21 of giving him a harsher sentence than was imposed at the
22 first trial. It just simply can't happen.

23 And, secondly, it is vindictiveness that the Supreme
24 Court is addressing itself to, and that is why they lay out
25 the standards in there.

1 We suggest, Your Honor, that there is more than
2 ample information for the Court to base a consecutive sentence
3 on under Pearce. It just seems plain when, as I indicate,
4 the Court cannot sentence the defendant more harshly.

5 MR. GOLDBERGER: May I respond, Your Honor?

6 THE COURT: You may.

7 MR. GOLDBERGER: Judge, I think Mr. Barcella misses
8 the point, and I think he certainly missed the point of what
9 Your Honor read from the opinion in Pearce.

10 And Your Honor can see that Mr. Barcella didn't
11 even answer Your Honor's question, which is what can you
12 point to identifiable objective information about this defendant
13 since the last time he was sentenced on these perjury counts,
14 and there isn't one thing that can be pointed to which is
15 adverse to the defendant.

16 All of the factors are in favor of the defendant,
17 and I think this squarely fits within North Carolina v. Pearce,
18 Your Honor..

19 THE COURT: Very well.

20 MR. BARCELLA: Your Honor, with respect to the
21 sentencing itself, may I be heard?

22 THE COURT: Surely.

23 MR. BARCELLA: Your Honor, first of all, just as
24 one quick aside, I would note that in the Gebhart case, which
25 counsel cited in their memorandum, I think, as the Court

1 knows, a simple reading of that case shows the defendant
2 he had received 17 years for his perjury convictions, and
3 so even a 10-year sentence is not at all unusual when we
4 are talking about false declarations convictions and the
5 sentences that are received thereunder.

6 Your Honor, we are not going to stand here hypo-
7 critically and suggest that we can forget that the United
8 States Government can forget four and one-half years of investig
9 tion that basically took us from September 21, 1976 until
10 today, nor that we can forget the acts of terrorism that
11 the Cuban Nationalist Movement and one of its nom de guerres
12 may have claimed credit for over the years.

13 This man, as the probation report indicates, is
14 a national leader of that group.

15 MR. GOLDBERGER: I object, Your Honor. There is
16 no indication he is a national leader from May 7th.

17 MR. BARCELLA: Of the Cuban Nationalist Movement,
18 Your Honor.

19 THE COURT: Mr. Goldberg, you still haven't lost
20 your knack. Don't interrupt.

21 MR. GOLDBERGER: Very well, Your Honor.

22 MR. BARCELLA: Your Honor, we are also not going
23 to stand here and suggest that we can forget the prior acts
24 of terrorism that this defendant specifically had been involved
25 in, that we can forget the 1964 bazooka attack on the United

1 Nations, the 1969 possession of explosives conviction, the
2 1972 conviction for conspiracy to bomb property of a foreign
3 government.

4 THE COURT: He has served time, hasn't he?

5 MR. BARCELLA: Yes, Your Honor, but we cannot for-
6 get them nor can we suggest that those acts of terrorism
7 should be forgotten.

8 They play a role in trying to determine what kind
9 of a man is before the Court for sentencing. I can't even
10 suggest to the Court without being hypocritical that I should
11 forget Sherman Cominski or Antonio Politerietes, because
12 all of this goes into the makeup of trying to determine what
13 the man is.

14 I can't forget the parole violation, Your Honor,
15 where he granted an order of a prior court that was imposed
16 at the time of sentencing. And that that court later on
17 had to revoke his parole.

18 In fact, as the Court knows, at the time that the
19 defendant was serving time for the prior sentencing on this
20 case, he was also serving two and one-half years on the parol
21 violation. In other words, whether he had been convicted
22 of these offenses the last time or not, he would have been
23 serving two and one-half years of incarceration on the parole
24 violation for the conspiracy charges up in New Jersey.

25 I also can't forget, Your Honor, the comments of

1 some of the jurors in the second case whom we have spoken
2 with since the time of the verdict on May 30th, nor do I
3 think that we should forget some of those comments. I would
4 not be up here arguing for maximum consecutive sentences
5 on the two charges that are left if that suggestion was incon-
6 sistent with the conversations that we have had with some
7 of the jurors in this case.

8 I can't forget without being hypocritical, Your
9 Honor, some of the evidence that was excluded. I can't --
10 I can't forget Ronni Moffitt or Orlando Letelier because
11 they do play a part in this case. They play a very real
12 part, Your Honor, because at the very least the lies that
13 Guillermo Novo told the grand jury a month after this assassi-
14 nation, those lies at the very least cost the United States
15 two years of an investigation.

16 They cost the United States untold resources, untold
17 harm basically in trying to investigate this case when
18 two years earlier we had a man in the grand jury who lied,
19 who the jury by its verdict found knew about the death of
20 Orlando Letelier, had connections in DINA, had people that
21 he knew in DINA, and lied about that to a grand jury in the
22 District of Columbia.

23 I can't forget about that, Your Honor.

24 The sentencing -- a sentencing has to be not basically
25 in a bubble. It has to be the sum total of what a man is.

1 If a sentence is to be meaningful here, Your Honor,
2 we suggest that it has to be maximum consecutive sentences
3 on both counts. Guillermo Novo, Your Honor, could walk out
4 of here if he gets no further time, considering that his
5 lies to a grand jury are a badge of honor, and they should
6 not be that.

7 They should be, instead, a medal of criminality
8 showing exactly what he is and exactly what he has done.

9 He is a terrorist, and he is a liar, and he should
10 be sentenced on the basis of that.

11 MR. GOLDBERGER: May I just be heard briefly, Judge,
12 for the last time?

13 THE COURT: Yes.

14 MR. GOLDBERGER: It seems to me what Mr. Barcella
15 wants you to do is to sentence Mr. Novo for crimes that he
16 has already been sentenced for and served his time, and it
17 seems to me that he wants you to sentence him for the murders
18 of Orlando Letelier and Ronni Moffitt for which a jury found
19 him not guilty, and that is exactly what would be totally
20 improper and unfair to this defendant.

21 I would suggest to the Court that there shouldn't
22 be any question in the Court's mind that Mr. Novo had served
23 three years in jail on this case, and that is sufficient
24 time under anybody's circumstances for a perjury conviction.

25 To mete out any further sentence to this man, Judge,

1 I think, would be unjust at this point.

2 THE COURT: The Court will note for the record --
3 is there anything else you wish to say?

4 MR. GOLDBERGER: No, sir.

5 THE COURT: The Court will note for the record
6 that in addition to the sentencing memorandum provided by
7 the defendants, that a number of letters and commendations
8 from what appears to be reputable persons in the community
9 of Union City, Bergerline and other areas of North Jersey
10 have been filed, including businessmen, a priest, community
11 organizations, a person connected with Rutgers University
12 and just plain John Q. citizens.

13 Mr. Novo, you do stand acquitted by the jury of
14 the murder counts of the indictment. They nonetheless found
15 you guilty of the false declaration counts, and they are
16 serious counts despite what your attorney says, despite the
17 references that he makes to sentencing data and statistics
18 from the Southern District of New York.

19 The difficulty with those representations is that
20 they tell very little about the underlying factors behind
21 the particular defendant who was sentenced.

22 Mr. Goldberger, you and the District Attorney know
23 quite well your prior record, and the Court has to consider
24 that to some extent, and I am not using it as a sword over
25 your head in any way, but those are facts, those are ingredients

1 which the Court must of necessity consider in meting out
2 a sentence, and I certainly realize that you have served
3 in terms of a possible sentence for the two false declaration
4 counts a portion of time.

5 According to the report and information I have
6 from the Bureau of Prisons, which is reflected, in part,
7 in the presentence report to which Mr. Goldberger has seen
8 and to which he alluded, even under the sentence which I
9 did impose, considering the change of circumstances as we
10 now are confronted with in terms of you are only standing
11 convicted of the two false declaration counts. If you were
12 given credit for the time that you have served, you would
13 have the prospects of looking forward to a release. If I
14 impose the same sentence, you would stand the prospects of
15 being released at a reasonable early time.

16 I can't go as far as the United States Attorney
17 suggests. I will not go as far as the United States Attorney
18 suggests. I don't think that it is warranted under the cir-
19 cumstances. I don't think that it is warranted under a clear
20 reading of Pearce.

21 Upon consideration of the verdict of the jury,
22 it is considered and adjudged that you are guilty as charged
23 and convicted of two counts of false declaration, and it
24 is the judgment of the Court that you be committed to the
25 custody of the Attorney General or his authorized representat

1 for a maximum period of 54 months pursuant to section 4205(b)(2)
2 of Title 18.

3 On each count of the indictment false declaration
4 count issue, the sentence imposed shall run concurrently
5 with each other.

6 The judgment shall provide that you shall be given
7 full credit for the entire time of your incarceration, and
8 the Court will recommend to the Bureau of Prisons that during
9 the remaining portion of your sentence that you be confined
10 to a minimum-security facility to be selected in their own
11 discretion near the metropolitan area of New York City.

12 You will step back immediately. I will not allow
13 him to report.

14 MR. GOLDBERGER: Judge, would you consider leaving
15 the defendant on bail pending an appeal of Your Honor's sentence
16 He has met all of his obligations to the Court in terms of
17 bail.

18 In view of Your Honor's sentence, which I believe
19 is four and one-half years, he has done three years. If
20 he was not allowed bail pending appeal, Judge, by the time
21 the appeal was heard, I think the issue would be moot.

22 I would ask Your Honor to allow him to remain at
23 liberty on bail pending the appeal of Your Honor's sentences.

24 THE COURT: What bail?

25 MR. GOLDBERGER: The same bail conditions that

1 exist now, Your Honor, which are ---

2 THE COURT: Is a bondsman prepared to ---

3 MR. GOLDBERGER: He is not here in court, Judge,
4 but I feel quite sure that Mr. Olzowy -- the bond is still
5 in force at this point, and as long as Your Honor maintains
6 the bond ---

7 THE COURT: Oh, yes. But there is a changed circum-
8 stance now. We have a conviction and we have a sentence.

9 I would want some affirmative representation from
10 the bondsman that he will accept the bond and the conditions
11 which I imposed originally.

12 MR. GOLDBERGER: If Your Honor will give me exactly
13 two minutes, I will call Mr. Olzowy's office and determine ---

14 THE COURT: I would want something beyond that,
15 Mr. Goldberger.

16 MR. GOLDBERGER: Would Your Honor consider a direct
17 call to Your Honor's chambers from Mr. Olzowy himself, indicating
18 he would be willing to keep the bond in force during this
19 period?

20 THE COURT: How would I know that it is he with
21 whom I am talking?

22 MR. GOLDBERGER: Well, Your Honor heard him on
23 the witness stand, Judge, during the hearing on the bail.

24 THE COURT: I could hardly understand him.

25 MR. GOLDBERGER: I can have down to the court

1 by Monday, Your Honor, a notarized affidavit from Mr. Olzowy
2 in regard to -- I can have it this afternoon perhaps, but
3 certainly by Monday a notarized affidavit from Mr. Olzowy
4 that he indicates to the Court that he is willing to keep
5 the bond in force during the pendency of this appeal.

6 MR. BARCELLA: May I be heard, Your Honor?

7 THE COURT: Yes.

8 MR. BARCELLA: Your Honor, Mr. Goldberger, I assume,
9 misspoke himself when he said to note an appeal of the Court's
10 sentence.

11 The Court's sentence is within the statutory guid-
12 lines and it is perfectly a legal sentence. I think if it
13 was to appeal the convictions on the false declarations,
14 the position of the United States would be that there simply
15 are no viable appellate issues that were made, that as a
16 practical matter to allow the defendant out on bond pending
17 the appeal of a conviction for which at this juncture we
18 can see no legitimate viable appellate issues is merely for
19 the purpose of putting off the inevitable.

20 We see no reason why the service of the sentence
21 should not begin immediately.

22 MR. GOLDBERGER: Judge, we feel there is an issue
23 that we would like to raise in the circuit and on the convic-
24 tions on the false declarations counts, and I would suggest ---

25 THE COURT: You are going to do what?

MR. GOLDBERGER: We are going to raise an issue.

1 THE COURT: On the false declarations count?

2 MR. GOLDBERGER: Yes, sir.

3 THE COURT: Oh, I should have indicated, Mr. Novo,
4 you have a right to appeal from the sentence, from the con-
5 viction, from the jury conviction, and, Mr. Goldberger, of
6 course, you will take the necessary steps to protect the
7 rights.

8 Very well. The defendant will step back pending
9 an unequivocal affidavit from the bondsman.

10 MR. GOLDBERGER: Very well.

11 THE COURT: And, Mr. Goldberger, you may exert
12 every effort. I will consider it even tomorrow.

13 You get it down here.

14 MR. GOLDBERGER: I will see if we can get it down
15 here this afternoon, Judge.

16 THE COURT: You get it immediately, and I will
17 consider it.

18 I will say this, that frankly I think -- well,
19 I shouldn't say that because judges always stand reversed,
20 but you have the right to note and to perfect an appeal,
21 and you would perhaps be derelict in your duties if you didn't
22 pursue it, but I think it is a fruitless gesture, and I don't
23 want to have to eat those words six or eight months from
24 now, but I still think it is a fruitless gesture.

25 MR. BARCELLA: Your Honor, I assume that the Court

1 is requiring more than simply an affidavit from Mr. Olzowy,
2 but rather, a written motion for bond pending appeal.

3 I think that is what is appropriate under the circum-
4 stances so that we could then respond to that.

5 THE COURT: Well, I think I have heard everything
6 that is necessary in this case. Mr. Goldberger, to preserve
7 a clean record, you had better file a motion.

8 MR. GOLDBERGER: I can't do that today, Judge.
9 That will have to wait until Monday then.

10 THE COURT: All right. So the defendant will stand
11 incarcerated until Monday.

12 MR. GOLDBERGER: Your Honor will not leave the
13 defendant out pending that motion?

14 THE COURT: No, I will not, Mr. Goldberger.

15 MR. GOLDBERGER: Thank you, Judge.

16 THE COURT: All right.

17 [Whereupon, at 10:49 a.m. the Court proceeded to
18 the consideration of other business.]

19

20

21

22

23

24


25

CERTIFICATE OF REPORTER

1
2
3 I, M. Eugene Olsen, C.S.R., an Official Court Reporter
4 for the United States District Court for the District of
5 Columbia, do hereby certify that I reported, by machine shorthand
6 in my official capacity, the proceedings had in the sentencing
7 in the case of United States of America v. Guillermo Novo
8 Sampol, Criminal Action No. 78-367, in said Court, on the
9 26th day of June 1981.

10 I further certify that the foregoing 27 pages constitute
11 the official transcript of said proceedings as taken from
12 my machine shorthand notes.

13 IN WITNESS WHEREOF, I have hereunto subscribed
14 my name, this the 29th day of June 1981.

15
16 
17 Official Court Reporter
18
19
20
21
22
23
24
25