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IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
EL PASO DIVISION

UNITED STATES OF AMERICA
v.
JOSE H. PUJOL

No. EP:06-CR-1836-KC
El Paso, Texas
March 13, 2008

SENTENCING
BEFORE THE HONORABLE KATHLEEN CARDONE
UNITED STATES DISTRICT JUDGE

APPEARANCES:

For the Government: Paul Ahern
Assistant United States Attorney
700 East San Antonio, Suite 200
El Paso, Texas 79901

For the Defendant: Luis Fernandez
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Miami, Florida 33129-2054

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1 THE CLERK: EP:06-CR-1836, the United States of
2 America versus Jose Pujol.

3 MR. AHERN: Good morning, Your Honor. Paul Ahern and
4 John Van Lonkhuyzen on behalf of United States.

5 MR. FERNANDEZ: Good morning, Luis Fernandez on behalf
6 of Jose Pujol, who's here with me.

7 (Defendant sworn.)

8 THE COURT: You are Jose Pujol?

9 DEFENDANT PUJOL: Yes.

10 THE COURT: You are here this morning, Mr. Pujol,
11 having pled guilty to obstruction of justice with a statutory
12 penalty of ten years incarceration, \$250,000 fine, three years
13 of supervised release, and a \$100 special assessment. So we
14 are here this morning for your sentencing.

15 Do you understand that?

16 DEFENDANT PUJOL: Yes, Your Honor.

17 THE COURT: A Presentence Investigation Report was
18 prepared, Mr. Pujol. Have you had the chance to go over that
19 with your attorney? Did you see the sentencing --

20 DEFENDANT PUJOL: Yesterday, I saw it.

21 THE COURT: Okay. But you understand it's the
22 sentencing report?

23 DEFENDANT PUJOL: Yes.

24 THE COURT: It talks about your personal information
25 and your guideline range. You had a chance to go over that?

1 more than that, it was a violation of this Court's order. And
2 if nothing else, what this Court does today will send a message
3 of how it values its own orders.

4 Again, we heard the Court earlier today talking to
5 another defendant who had violated this Court's order. And if
6 this Court were to depart based on the origin of this
7 defendant, based on some illogical belief that in --
8 retaliation from a foreign country all this unsubstantiated
9 cloak and dagger business that -- that's found in the pleadings
10 and throughout the argument today, that that sends a message
11 that this Court's orders are not worth very much.

12 THE COURT: All right. You may proceed with
13 allocution, if you have anything you wanted to add. I also
14 want to hear from Mr. Pujol.

15 MR. FERNANDEZ: May I have a moment?

16 THE COURT: Sure.

17 MR. FERNANDEZ: I think Mr. Pujol would like to
18 address the Court.

19 THE COURT: That's fine.

20 DEFENDANT PUJOL: Your Honor, I truly believe in the
21 freedom of democracy where you don't have to fear your
22 Government, where you elect whoever you think is the best, you
23 pay your taxes, and then you can ask things, what did you do
24 with the money I paid? If you have to fear government, if you
25 comply with the law, that government is not good. And when I

1 left Cuba, I was in the top of the top, holding as a chief
2 pilot and ~~port~~^{PORT} superintendent nickel cobalt plant. I fought
3 the dictator Bautista, because I don't believe in
4 dictatorships, left or right, or kingdoms. I believe a system,
5 like in this country. Okay.

6 When -- I had a lot of confrontations with Che
7 Guevarra and Raul Castro, because I had the morality to be able
8 to speak without fear. And I never joined the allegiance or
9 anything. So when I saw the arrival of the Russian troops,
10 because I was with the Russian engineers and all that, and I
11 was for them an example that they could not expect to be better
12 in their system than what we had before in Cuba. Because I had
13 freedom. I had everything that took hard work and effort to
14 obtain. I was a bad influence to the Russian engineers.

15 At that time the Americans knew everything that
16 happened there and what was the purpose of Che Guevarra and
17 Raul Castro when they finally got me to go back there.

18 And I was providing all that information to the
19 American Government because I never will accept Communism and
20 the way they are a bunch of hypocrites and how they tried to
21 destroy this country. Like they picture the U.S. an octopus.
22 If we cut one tentical here, in Bolivia and another one, and
23 this other one, we will cut them from supplies needed, like in
24 Venezuela.

25 **CUBA**
I was born in this country. Mr. William Rogers, when

1 I was leader of the fisherman after I spent many years with the
2 government in the Cuban matter -- by the way I left Cuba when I
3 saw the arrival of the Russian troops. I say, they are not
4 going to allow that because of the ~~moral~~ **MONRDE** doctrine that I was
5 taught in school here. So I came with intention to help the
6 Americans to liberate our country. At that time American
7 government went to see me to join with them because I was with
8 my ~~dad~~ **YATCH** independently. Okay.

9 I spend six years following the -- never failing the
10 mission, risking my life, like I was in Cuba. Because I
11 believe a person if really is free and thinking, has no fear of
12 death. Okay. I don't want to die because I want to enjoy
13 life. But in freedom, not in fear. That's what I have
14 instilled to all my family friends who have served this
15 country.

16 Then circumstances led me to -- I was actually just
17 the captain to carry one here. I never tried to break any
18 American law. Okay. I cannot speak more because whatever I
19 say here, I could be extradited in Santa Domingo or Venezuela,
20 and Cuba will execute me. They will not waste any time.
21 That's about all. That's why I'm in this Court to exact the
22 law and at your mercy. I know I'm needed to my family more
23 than ever. But I -- that's a price I have to pay.

24 THE COURT: Mr. Pujol, you know, one of the things you
25 said to this Court is that the an individual should not be

1 afraid of their government. But in both this case and in the
2 Posada Carriles case that I think Mr. Ahern made reference to,
3 and your attorney made reference to -- I want everyone to be
4 perfectly clear this case is this case. And I appreciate --
5 and one of the things I have to take into consideration is who
6 you are as an individual, the circumstances of this offense.
7 And I will do all of that.

8 But I want to make perfectly clear to you, to your
9 attorney, to the Government's attorney, that this case is about
10 this case. It's not about all of the -- and I certainly
11 comprehend and appreciate all that you've told me about your
12 history. But again, what I want everyone to be perfectly clear
13 about is that there are laws in this country that have to be
14 respected. Otherwise, it wouldn't be the country that you say
15 you so love and admire. And it is very important that
16 everyone, no matter what their circumstances, would respect the
17 laws of this country. Again, that's what this case is about.

18 DEFENDANT PUJOL: I never had intention to break the
19 laws of this country.

20 THE COURT: I understand.

21 DEFENDANT PUJOL: I was ignorant of anything else.

22 THE COURT: Okay. And I understand what you're saying
23 to me, Mr. Pujol. But I want everyone to be clear in this
24 case, that -- though I'm -- this is your allocution and -- and
25 your sentencing, and I'm willing to listen to what you want to

1 present to the Court, because I have to take into consideration
2 all of the things that make you who you are in order to try to
3 fashion a fair and reasonable sentence. But I don't want
4 anyone to lose site of what this case is truly about, which is,
5 you were charged with an offense you pled guilty to. For
6 whatever reason the circumstances occurred, historically, that
7 go way, way back, I certainly appreciate. That doesn't change
8 the fact that we are talking about an offense that occurred.

9 Do you understand that?

10 DEFENDANT PUJOL: Yes, Your Honor.

11 THE COURT: Anything else you want to tell me?

12 DEFENDANT PUJOL: I'm at your mercy.

13 THE COURT: I understand that. Anything further --
14 stay up here, Mr. Pujol. You're not done yet.

15 Anything else?

16 MR. FERNANDEZ: Your Honor, I think everything has
17 been said. I will point out that in its fine allocution, the
18 Government didn't mention anything about the situation that
19 exists with Mr. Pujol's wife. That is the situation where the
20 case law is pretty clear that if there is no caretaker for an
21 individual, the Court can grant a departure on that basis
22 alone.

23 In this particular case, I realize there's a lot of
24 things tied here together. But that factor is one that has not
25 been rebutted. I think for the purposes of sentencing it's

I NEVER SIGNED
THE "PLEA AGREEMENT"
THEY DID IT
AGAINST MY WILL
THEY DID IT IN
TEXAS, I WAS IN MIAMI

GARY WEISER
IN TEXAS
LIED,
HE WAS NOW
REPRESENTING
SANTIAGO

1 conceded. And we do have a 75-year-old who's in her last days.
2 She does need that he attend to her. I apologize if we got a
3 little emotional here during allocution. But this poor man has
4 kept it inside all these years.

5 THE COURT: I certainly understand. That's why made
6 the comments I made.

7 MR. FERNANDEZ: I thank the Court.

8 THE COURT: I have no problems him saying whatever he
9 feels he wants the Court to understand about him and his life.

10 MR. FERNANDEZ: I concur with you. And I thank you
11 for your patience in allowing him to say what was in his heart.

12 THE COURT: Anything further on behalf of the
13 Government?

14 MR. AHERN: Two things. First, I think that the
15 situation of the defendant's wife alone is not sufficient to
16 depart or vary in this case. The defendant, again, committed
17 this offense late in life. I think he chose his cause over his
18 family. And that is no reason to hold him to a lower standard
19 than it would, than this Court would any other citizen.

20 And just finally, I didn't mean to imply to the Court
21 by mentioning the Posada Carriles case that I thought these two
22 were linked. As a matter of fact, the Government's position is
23 that these two are totally separate. And, therefore, there is
24 no reason for this Court to depart from this advisory
25 guidelines range in this case.

1 THE COURT: I do have a question for you. And I
2 appreciate that. But, I guess, one of the questions I have for
3 you is -- that has to do with -- because you made reference to
4 one of the prior defendants before the Court. I note that
5 Mr. Pujol has a Criminal History of I. In other words, he's
6 never had any problems before this occasion. And one of the
7 things that I have to -- all of the factors that I have to
8 consider. But some of the factors I have to consider are the
9 circumstances of the offense, in order to provide just
10 punishment, in order to promote respect for the law, those are
11 some of the sort of variance factors I have to look at.

12 And, I guess, one of the things I struggle with is
13 though I feel very strongly about not violating the law,
14 because that's what we're all here to make sure that justice is
15 done, is that at the same time I have to look at each defendant
16 individually. Mr. Pujol is not the prior defendant. The prior
17 defendant, his circumstances were completely different than
18 Mr. Pujol's.

19 And so can you tell me, Mr. Ahern, even if this
20 doesn't merit a departure, why this Court should not consider a
21 variance in this case?

22 MR. AHERN: Because, Your Honor, I think it's clear
23 from both the defendant's presentation here and also in the
24 letters that were submitted to this Court, it's clear that the
25 defendant has carried on a lifetime committed to a cause. All

1 right? I don't think that cause is necessarily relevant to the
2 circumstances of this offense, except to say that to the extent
3 that this was his motivation for committing this offense, he's
4 no different than any other defendant who has additional
5 motivations. I mean, that -- that -- the fact that he has a
6 political motivation for doing this comes through loud and
7 clear here.

8 But I think that once -- politics should not be the
9 basis for departure or a variance under the guidelines.
10 Because that is nowhere contemplated in either statute or
11 guidelines. It also sets the principle that just cannot be
12 true, that commitment to a cause, a particular cause, trumps
13 the law. You know, but -- it may not in other causes or maybe
14 it does for every case, in which case we might as well as throw
15 the guidelines and statutes out. I don't think this defendant
16 is any different in that sense than any other defendant who
17 would show up in front of this Court convicted of obstruction
18 of justice. They all had reasons or do it. Some of them may
19 have been noble. But that's -- the nobility of one's politics
20 are not subject for consideration in the Court. That's not --
21 bottom line, that cannot be what separates one defendant from
22 another.

23 That -- from what I've heard this morning, that is the
24 only thing that really separates this defendant from any other
25 defendant of his age who committed the offense, at his age,

1 which are the shoes that this defendant stands in. So to that
2 extent I don't think there is any difference between this
3 defendant and the defendant contemplated by the guidelines.
4 And to say otherwise, I think, is -- is contrary to the beliefs
5 that we've all be professing this morning.

6 THE COURT: Anything further before the Court rules?

7 MR. FERNANDEZ: I am sorry.

8 THE COURT: Anything further?

9 MR. FERNANDEZ: No -- well, yes. I did mention to the
10 Court that the objections that we had noted dealing with the
11 manner we should be addressing, we had accepted. And we go
12 back to -- Judge, it's kind of hard to separate the man from
13 the whole. And I do believe he is different from other people
14 that come here. And to say that a noble cause is -- that we
15 show indifference, perhaps is not the message I think that by
16 his entering a plea of guilty -- and he is going to be punished
17 today. The Court may have several options that are applicable
18 to this defendant, because we are following the law.

19 THE COURT: Mr. Pujol, based on the information
20 provided, the circumstances of this case, your particular
21 circumstances, in keeping with the goals of the sentencing
22 guidelines, and the factors of 3553(a), first of all I want to
23 make perfectly clear, Mr. Pujol, though I'm well-familiar with
24 your circumstances, and the circumstances of this case, your
25 political views of government or anything to do with politics

1 of this case, has nothing to do with why the Court is going to
2 do what I do in the case. Because my job is to follow the law
3 as it is given to me, and to provide justice. I have to
4 balance those two factors.

5 So in keeping with all of that, the Court is going to
6 find that a fair and reasonable sentence in this case warrants
7 a variance, a variance based on -- to provide just punishment
8 in this case, to afford adequate deterrence, because it's
9 important that you understand that no matter what sentence I
10 fashion, my job is to make sure that you understand you cannot
11 violate the laws of this country that you profess to so love,
12 the circumstances of this offense, because I have to take that
13 into consideration in sentencing you, to reflect the
14 seriousness of this offense, because you are charged with
15 obstruction, to promote respect for the law, because I do think
16 historically you have shown respect for the law. In this case,
17 for whatever reasons you decided to disobey a Court's order,
18 you did disobey this Court's order, and the history and
19 characteristics of you as the defendant.

20 Taking all of that into consideration, I think it
21 warrants a variance. For that reason the Court is going to
22 sentence you to three months incarceration. Once you are
23 released, you will remain under this Court's supervision on
24 supervised release for a period of two years. You can commit
25 no further crimes against the United States, or any state, or

1 local government. You will be prohibited from possessing a
2 firearm or other dangerous weapon. You will be ordered to
3 refrain from the unlawful use of controlled substances, and to
4 submit to drug testing as required by the probation department.
5 There will be a \$250 fine and a \$100 special assessment.

6 You are currently out on bond.

7 What is the request, because he will have to
8 self-surrender?

9 MR. FERNANDEZ: Your Honor, Judge, if the Court could
10 give him 90 days and recommend a placement in the Florida area,
11 perhaps South Florida or Goldman, which is Central Florida.

12 THE COURT: All right. Who is here from pre-trial?

13 PRETRIAL SERVICES OFFICER: Good morning. Sandra Lara
14 on behalf of Pre-trial Services. Mr. Pujol is reporting to our
15 offices in Miami, Florida. They're reporting he is in
16 compliance with all conditions. Therefore, we are recommending
17 that he continue on bond pending his surrender date.

18 THE COURT: All right. What is the Government's
19 position?

20 MR. AHERN: Self-surrender is fine with the
21 Government.

22 THE COURT: Mr. Pujol, the Court has no problems. You
23 have done fine on bond. The Court has no problems with 90-day
24 self-surrender date. You must self-surrender on June 11, 2008,
25 at 2:00 in the afternoon. Between now and then you can commit

1 no further -- no crimes. If you do offend any of the laws of
2 this country, you will be picked up immediately. Then, on
3 June 11th -- and I understand how difficult the circumstances
4 are especially because of the illness of your wife, you need to
5 make arrangements. June 11th you must self-surrender.

6 You have the right to appeal my decision. That
7 information is being given to your attorney.

8 Anything further?

9 MR. AHERN: Just for the record, Your Honor, the
10 Government does object to the sentence.

11 THE COURT: So noted.

12 MR. AHERN: I think that as we said in our pleadings
13 this places this defendant, who ought to be in the same shoes
14 with Ernesto Abreyu, if anyone, gives him substantially lower
15 sentence than that individual received. So I wanted to note
16 that for the record as well.

17 THE COURT: So noted. And I also want to note I did
18 not have Mr. Abreyu before me. I do appreciate there were a
19 number of co-defendants in this case under similar
20 circumstances. I want everybody to be perfectly clear that I
21 listen to every case individually. I fashion every sentence
22 individually. I believe this is a fair and reasonable sentence
23 for Mr. Pujol.

24 MR. FERNANDEZ: I need clarification. Surrender is on
25 the 11th. Does he surrender in the Southern District of

1 Florida or is he notified by probation or does he have to come
2 back here?

3 THE COURT: No, he can self-surrender at the place
4 designated. It's been my experience sometimes they haven't
5 designated by then. If they haven't, he can surrender at the
6 Marshal's facility. But he must self-surrender by that day.
7 He can before, if he wants to, early. Okay.

8 And I didn't make this statement. I do want to make
9 sure, that the Court will recommend a facility in Florida
10 either South or Central. But that's up to the Bureau of
11 Prisons.

12 MR. AHERN: Just to clean up the record, the
13 Government moves to dismiss the prior indictment.

14 THE COURT: The Court will dismiss.

15 (Adjournment.)

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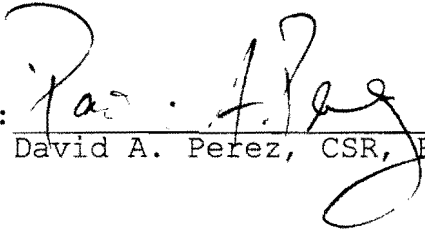
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19 I certify that the foregoing is a correct transcript
20 from the record of proceedings in the above-entitled matter. I
21 further certify that the transcript fees and format comply with
22 those prescribed by the Court and the Judicial Conference of
23 the United States.

23

24

Signature: 

David A. Perez, CSR, RPR

Date: April 23, 2008

25

David A. Perez, CSR, RPR