
No. _____

In the
Supreme Court of the United States

WALTER DANIEL PREZIOSO, Petitioner

v.

UNITED STATES OF AMERICA, Respondent

On Petition for Writ of Certiorari to the
United States Court of Appeals
for the Ninth Circuit

Appendix

FILED

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

OCT 3 2019

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

WALTER DANIEL PREZIOSO,

Defendant-Appellant.

No. 18-50056

D.C. No.

2:16-cr-00712-JFW-1

Central District of California,
Los Angeles

ORDER

Before: RAWLINSON and MURGUIA, Circuit Judges, and GILSTRAP,* District Judge.

The panel has voted to deny the Petition for Rehearing. Judges Rawlinson and Murguia voted, and Judge Gilstrap recommended, rejection of the Suggestion of Rehearing En Banc.

The full court has been advised of the Suggestion for Rehearing En Banc, and no judge of the court has requested a vote.

Appellant's Petition for Panel Rehearing and Suggestion for Rehearing En Banc, filed September 6, 2019, is DENIED, and the Suggestion for Rehearing En Banc is REJECTED.

* The Honorable James Rodney Gilstrap, United States District Judge for the Eastern District of Texas, sitting by designation.

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

JUL 25 2019

FOR THE NINTH CIRCUIT

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

UNITED STATES OF AMERICA,

No. 18-50056

Plaintiff-Appellee,

D.C. No.

v.

2:16-cr-00712-JFW-1

WALTER DANIEL PREZIOSO,

MEMORANDUM*

Defendant-Appellant.

Appeal from the United States District Court
for the Central District of California
John F. Walter, District Judge, Presiding

Argued and Submitted April 11, 2019
Pasadena, California

Before: RAWLINSON and MURGUIA, Circuit Judges, and GILSTRAP, ** District Judge.

Appellant Walter Prezioso was convicted of tax fraud and sentenced to 24 months imprisonment. Prezioso appeals his conviction and requests a retrial. He also objects to the District Court's use of acquitted and uncharged conduct in

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

** The Honorable James Rodney Gilstrap, United States District Judge for the Eastern District of Texas, sitting by designation.

sentencing on Sixth Amendment grounds. We have jurisdiction under 28 U.S.C. § 1291 and affirm.¹

I. Jury Instructions

Whether a jury instruction should have been given in the first place is reviewed for abuse of discretion. *United States v. Heredia*, 483 F.3d 913, 921 (9th Cir. 2007). “We review *de novo* whether the . . . instructions misstated or omitted an element of the charged offense.” *United States v. Chi Mak*, 683 F.3d 1126, 1133 (9th Cir. 2012). A district court’s specific formulation of the instructions is reviewed for abuse of discretion. *Id.* If a party fails to object to jury instructions in accordance with Federal Rule of Criminal Procedure 30(d), we review for plain error. *United States v. Anderson*, 741 F.3d 938, 945 (9th Cir. 2013).

“[T]he relevant inquiry is whether the instructions as a whole are misleading or inadequate to guide the jury’s deliberation.” *Anderson*, 741 F.3d at 947. The instructions are viewed “in context, not in isolation.” *United States v. Pierre*, 254 F.3d 872, 876 (9th Cir. 2001).

Prezioso was charged with tax fraud, which requires a showing of willfulness. *Cheek v. United States*, 498 U.S. 192, 200 (1991). The District Court gave two instructions on willfulness. The first instruction was agreed to by the parties and

¹ We assume the parties’ familiarity with the facts and procedural history of this case.

defined willful intent. The second was an advice-of-accountant instruction requested by the Government and objected to by defense counsel, which stated:

One element that the government must prove beyond a reasonable doubt is that the defendant had the unlawful intent to subscribe to income tax returns that were false as to a material matter. Evidence that the defendant in good faith followed the advice of an accountant would be inconsistent with such an unlawful intent. Unlawful intent has not been proved if the defendant, before acting, made full disclosure of all material facts to an accountant, received the accountant's advice as to the specific course of conduct that was followed, and reasonably relied on that advice in good faith.

In the context of criminal tax cases, a defendant has not acted willfully if he operates in good faith on a mistaken understanding of the law, no matter how unreasonable it may be. *Cheek*, 498 U.S. at 201–03. Prezioso argues that the advice-of-accountant instruction should have included this “good faith” caveat and by omitting such, the instruction sent mixed messages to the jury.

Based on the record, the District Court did not err in giving the advice-of-accountant instruction in the first instance. Prezioso's primary defense at trial was that he did not willfully violate the tax laws because he relied on the advice of his accountants. *See United States v. Walter-Eze*, 869 F.3d 891, 909 (9th Cir. 2017). The instruction was also a correct statement of law. This Circuit has explicitly rejected the contention that such an instruction must include a caveat that an incomplete disclosure to an accountant is sufficient if made in good faith. *United States v. Bishop*, 291 F.3d 1100, 1107 (9th Cir. 2002).

II. Exclusion of Expert

We review a district court's decision to admit or exclude expert testimony for abuse of discretion. *United States v. Christian*, 749 F.3d 806, 810 (9th Cir. 2014). Expert testimony is admitted only if it will "assist the trier of fact to understand the evidence or to determine a fact in issue." Fed. R. Evid. 702; *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579, 589 (1993).

We find that the District Court did not err in excluding defense expert, Martin Laffer, whose intended testimony addressed the duties of accountants and their conformity with those standards. Under the specific facts of this case, the conduct of Prezioso's accountants has no bearing on whether Prezioso acted willfully.

III. Admission of Prior Testimony

"We review the district court's decision on the Rule of Completeness for an abuse of discretion." *United States v. Vallejos*, 742 F.3d 902, 905 (9th Cir. 2014). "[W]hether a district court's evidentiary rulings violated a defendant's constitutional rights" is reviewed *de novo*. *United States v. Waters*, 627 F.3d 345, 352 (9th Cir. 2010).

The Government moved to introduce parts of Prezioso's cross-examination from the first trial in its case-in-chief at the second trial. Prezioso argued that the selections were misleading and objected on the basis of Federal Rule of Evidence 106, the Fifth Amendment, and due process. The District Court overruled the

objections.

The District Court did not err in finding that Rule 106 did not apply. Notably, the Government read into the record those portions of Prezioso's prior testimony from the parallel civil suit that set forth his complete defense, thereby making any possible error harmless. The court also did not err in excluding Prezioso's prior exculpatory statements and such did not *ipso facto* equate to a contravention of his Fifth Amendment rights against self-incrimination. Neither was there evidence of a due process violation.

IV. Sentencing

This Circuit's precedent permits the use of acquitted and uncharged conduct in sentencing. *See, e.g., United States v. Barragan*, 871 F.3d 689, 716 (9th Cir. 2017). Any three-judge panel of this Court is bound by that precedent to reject Prezioso's objection.

AFFIRMED.

JS-3/ent

**United States District Court
Central District of California**

UNITED STATES OF AMERICA vs.

Docket No.

CR 16-712-JFWDefendant Walter Daniel PreziosoSocial Security No. 4 7 8 6akas: Euprepio Tedeschi, Walter [74740-112]

(Last 4 digits)

JUDGMENT AND PROBATION/COMMITMENT ORDER

In the presence of the attorney for the government, the defendant appeared in person on this date.

MONTH	DAY	YEAR
February	5	2018

COUNSEL**Stephen Demik, DFPD and Gabriel L. Pardo, DFPD**

(Name of Counsel)

PLEA
☒ **GUILTY**, and the court being satisfied that there is a factual basis for the plea. ☐ **NOLO** ☐ **NOT**
CONTENDERE **GUILTY**
FINDINGThere being a verdict of **GUILTY**, defendant has been convicted as charged of the offense(s) of:

Subscribing to a False Return in violation of 26 U.S.C. § 7206(1) as charged in Count 5 of the Eight-Count Indictment filed on October 13, 2016

The Jury having reached a verdict of not guilty on Counts 1, 2, 3, 4, 6, 7, and 8 of the Indictment, the defendant is entitled to be discharged on each of these counts

**JUDGMENT
AND PROB/
COMM
ORDER**

The Court asked whether there was any reason why judgment should not be pronounced. Because no sufficient cause to the contrary was shown, or appeared to the Court, the Court adjudged the defendant guilty as charged and convicted and ordered that:

Pursuant to the Sentencing Reform Act of 1984, it is the judgment of the Court that the defendant, Walter Daniel Prezioso, is hereby committed on count 5 of the Eight-Count Indictment to the custody of the Bureau of Prisons for a term of 24 months.

Upon release from imprisonment, the defendant shall be placed on supervised release for a term of one (1) year under the following terms and conditions:

1. The defendant shall comply with the rules and regulations of the United States Probation Office and General Order 05-02.
2. During the period of community supervision, the defendant shall pay the special assessment in accordance with this judgment's orders pertaining to such payment.
3. The defendant shall truthfully and timely file and pay taxes owed for the year of conviction, and shall truthfully and timely file and pay taxes during the period of community supervision. Further, the defendant shall show proof to the Probation Officer of compliance with this order.
4. The defendant shall cooperate in the collection of a DNA sample from the defendant.

USA vs. Walter Daniel Prezioso [74740-112]

Docket No.: **CR 16-712(A)-JFW**

The drug testing condition mandated by statute is suspended based on the Court's determination that the defendant poses a low risk of future substance abuse.

It is further ordered that the defendant surrender himself to the institution designated by the Bureau of Prisons by noon on or before March 12, 2018. In the absence of such designation, the defendant shall report on or before the same date and time, to the United States Marshal located at the Roybal Federal Building, 255 East Temple Street, Los Angeles, California 90012.

It is ordered that the defendant shall pay to the United States a special assessment of \$100, which is due immediately. Any unpaid balance shall be due during the period of imprisonment, at the rate of not less than \$25 per quarter, and pursuant to the Bureau of Prisons' Inmate Financial Responsibility Program.

Pursuant to Guideline § 5E1.2(a), all fines are waived as the Court finds that the defendant has established that he is unable to pay and is not likely to become able to pay any fine.

The First Superseding Indictment is ordered dismissed.

Court recommends that the defendant be placed in a facility located in Southern California.

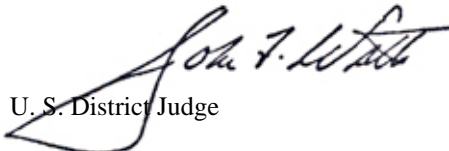
Defendant informed of right to appeal.

Bond exonerated upon self surrender.

In addition to the special conditions of supervision imposed above, it is hereby ordered that the Standard Conditions of Probation and Supervised Release within this judgment be imposed. The Court may change the conditions of supervision, reduce or extend the period of supervision, and at any time during the supervision period or within the maximum period permitted by law, may issue a warrant and revoke supervision for a violation occurring during the supervision period.

February 5, 2018

Date



U. S. District Judge

It is ordered that the Clerk deliver a copy of this Judgment and Probation/Commitment Order to the U.S. Marshal or other qualified officer.

Kiry Gray, Clerk Clerk, U.S. District Court

February 5, 2018

Filed Date

By Shannon Reilly /s/
Deputy Clerk

USA vs. Walter Daniel Prezioso [74740-112]

Docket No.: **CR 16-712(A)-JFW**

The defendant shall comply with the standard conditions that have been adopted by this court (set forth below).

STANDARD CONDITIONS OF PROBATION AND SUPERVISED RELEASE

While the defendant is on probation or supervised release pursuant to this judgment:

1. The defendant shall not commit another Federal, state or local crime;
2. the defendant shall not leave the judicial district without the written permission of the court or probation officer;
3. the defendant shall report to the probation officer as directed by the court or probation officer and shall submit a truthful and complete written report within the first five days of each month;
4. the defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer;
5. the defendant shall support his or her dependents and meet other family responsibilities;
6. the defendant shall work regularly at a lawful occupation unless excused by the probation officer for schooling, training, or other acceptable reasons;
7. the defendant shall notify the probation officer at least 10 days prior to any change in residence or employment;
8. the defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any narcotic or other controlled substance, or any paraphernalia related to such substances, except as prescribed by a physician;
9. the defendant shall not frequent places where controlled substances are illegally sold, used, distributed or administered;
10. the defendant shall not associate with any persons engaged in criminal activity, and shall not associate with any person convicted of a felony unless granted permission to do so by the probation officer;
11. the defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view by the probation officer;
12. the defendant shall notify the probation officer within 72 hours of being arrested or questioned by a law enforcement officer;
13. the defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court;
14. as directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics, and shall permit the probation officer to make such notifications and to conform the defendant's compliance with such notification requirement;
15. the defendant shall, upon release from any period of custody, report to the probation officer within 72 hours;
16. and, for felony cases only: not possess a firearm, destructive device, or any other dangerous weapon.

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

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA - WESTERN DIVISION
HONORABLE JOHN F. WALTER, U.S. DISTRICT JUDGE

UNITED STATES OF AMERICA,)	
)	
PLAINTIFF,)	CASE NO.
)	
vs.)	CR 16-712(A)-JFW
)	
WALTER DANIEL PREZIOSO,)	
)	
DEFENDANT.)	
)	

REPORTER'S TRANSCRIPT OF
SENTENCING
MONDAY, FEBRUARY 5, 2018
8:32 A.M.
LOS ANGELES, CALIFORNIA

MIRANDA ALGORRI, CSR 12743, RPR, CRR
FEDERAL OFFICIAL COURT REPORTER
350 WEST 1ST STREET, SUITE 4455
LOS ANGELES, CALIFORNIA 90012
MIRANDAALGORRI@GMAIL.COM

1 LOS ANGELES, CALIFORNIA; MONDAY, FEBRUARY 5, 2018

2 8:32 A.M.

3 ---

4
5 THE CLERK: Calling item 1, CR 16-712A-JFW,
6 United States of America versus Walter Daniel Prezioso.

7 Counsel, please state your appearances.

8 MR. ROCHMES: Good morning, Your Honor.

9 Paul Rochmes with James Hughes and
10 Valerie Makarewicz on behalf of the Government.

11 MR. DEMIK: Good morning, Your Honor.

12 Stephen Demik, deputy federal public defender,
13 and Gabriel Pardo from my office on behalf of Mr. Prezioso who
14 is present before the Court.

15 THE COURT: All right. The matter is before the
16 Court for pronouncement of judgment and imposition of sentence.
17 Is there any reason why judgment and sentence should not be
18 imposed at this time?

19 MR. ROCHMES: No, Your Honor.

20 MR. DEMIK: No, Your Honor.

21 THE COURT: Has the defendant and his counsel
22 read the presentence report as well as the revised presentence
23 report that was filed by the probation officer?

24 MR. DEMIK: Yes, Your Honor.

25 THE COURT: All right. Pursuant to Rule 32, the

1 Court will accept the undisputed portions of the revised
2 presentence report as its findings of fact.

3 Although the United States Sentencing Guidelines
4 are now advisory, the Court must still consider the advisory
5 guideline range in addition to the other directives set forth
6 in Section 3553(a) and impose a sentence that is sufficient but
7 not greater than necessary to comply with the purposes of the
8 act.

9 As counsel know, this Court follows a two-step or
10 a two-phase sentencing process. In phase one I will calculate
11 the applicable advisory guideline range which will require the
12 Court to resolve any objections to the presentence report
13 guideline calculations as well as any factual disputes.
14 Thereafter, I will determine whether, pursuant to the
15 Sentencing Commission Policy Statements, any departures from
16 the guidelines apply.

17 In this case the defendant was found guilty by a
18 jury on Count 5 of the Indictment. On December 22 the
19 probation officer filed the presentence report which appears as
20 docket No. 204 and a recommendation letter to the Court. On
21 January 31st of 2018 the probation officer filed the addendum
22 and revised PSR. The addendum notes that the factual
23 corrections requested by the defense apparently by an e-mail or
24 letter were made in the revised presentence report.

25 The revised presentence report calculates the

1 base offense level at level 20. The defendant's criminal
2 history category is category one. The resulting advisory
3 guideline range is 33 to 41 months.

4 The parties, both the defense and the Government,
5 have filed their sentencing position papers. The defense filed
6 on January 22nd of 2018 docket Nos. 206 and 208 which included
7 the video attached as Exhibit B, and then there were letters
8 that were filed on February 2nd, 2018. They appear as
9 docket No. 213.

10 The Government filed its sentencing position
11 paper on January 16, 2018. That appears as docket No. 205, and
12 the Government filed a reply on January 29th, 2018. It appears
13 as docket No. 210.

14 The parties have raised several phase one issues
15 that the Court must resolve before proceeding to phase two. I
16 will hear argument from counsel if they have anything that they
17 want to add to the -- to their sentencing position papers, and
18 then I will rule on each of those objections.

19 I assume for the defense, since Mr. Pardo offered
20 the sentencing position paper that addressed the phase one
21 issues, that Mr. Pardo will be arguing.

22 Or, Mr. Demik, are you going to argue?

23 MR. DEMIK: You got it correct, Your Honor.

24 THE COURT: All right. Let me first indicate
25 that the objections raised by the defense and responded to by

1 the Government relate to the defendant's objection to the use
2 of uncharged and acquitted conduct in determining the base
3 offense level of 20. The defense argues that the objection is
4 based upon the 5th and 6th Amendment grounds but recognizes
5 that the 9th Circuit allows the use of acquitted conduct. And
6 the defendant states he raises this issue to preserve the issue
7 for appellate review.

8 The defendant also argues that the Government
9 failed to prove by clear and convincing evidence that the loss
10 for the tax years 2007 through 2012, that the Government has
11 failed to prove that it was due to willful tax fraud, and
12 therefore, the Court should only consider the tax loss for
13 2015.

14 I note that the tax loss for the count of
15 conviction, if my notes are correct, is \$16,406. The total tax
16 loss as calculated by the probation officer, which was
17 supported by trial Exhibits 37 and 38, amounted to \$751,501.

18 So I will hear from you, Mr. Pardo, if you have
19 anything that you want to add with respect to those two issues.

20 MR. PARDO: Sure, Your Honor. I will take the
21 podium.

22 As the Court noted, the acquitted conduct
23 objection is to preserve that issue for further review.

24 With respect to the clear and convincing
25 evidence, I would only add one thing. You know, there is one

1 more point that was litigated before the Court, and it came up
2 at trial, and that was there was an issue of separate charts of
3 accounts created here.

4 As the Court may recall, the Government moved
5 in limine to be able to question about that. It didn't really
6 come up at trial except in the second trial at
7 cross-examination. I point that out to say that I think one of
8 the Government's main arguments in support of saying that they
9 met the standard for willful conduct is that there were
10 misclassifications in the charts of accounts. We know there
11 was this entirely separate chart of accounts that had different
12 misclassifications. There was testimony that that was done for
13 different reasons with respect to employees.

14 I think, if there was a desire to sort of hide
15 things from accountants, the obvious question is why not submit
16 an existing set of misclassified or altered charts of accounts
17 rather than what was, by and large, one of the listed correct
18 vendors but just had different codes. So I think that's
19 another thing that wasn't addressed in the papers that I really
20 think has not been contested that bears on whether willful
21 intent has been proven here.

22 THE COURT: Well, you don't dispute, do you, that
23 the amount of tax loss was the \$751,501 that was calculated by
24 the Government and set forth in the two trial exhibits that I
25 referred to?

1 MR. PARDO: We don't dispute that the offense
2 level is 20 and that the tax loss is in that band. With
3 respect to that exact number, we don't concede it, but we do --

4 THE COURT: Well, your client conceded it on the
5 stand. He indicated, during the course of his testimony, that
6 he recognized that amount. He recognized that he had made a
7 mistake and that he was prepared to pay that amount back to the
8 Internal Revenue Service.

9 MR. PARDO: Well, I don't recall the specific
10 concession of that amount of 750-. But, again, we're not
11 disputing that it would be at offense level 20.

12 And there were -- just to provide some further
13 clarification on that, there were interrogatory responses
14 submitted, and there were separate calculations done with
15 respect to those responses. When those are tabulated, we get
16 to the same offense level. So that's our position on the
17 amount, Your Honor, that it's between that band of, I think,
18 550- to 1.5 million. We're not necessarily agreeing with the
19 exact amount in the presentence report, but it's not an
20 objection to the offense level.

21 THE COURT: So then I'm lost in terms of what
22 you're -- if you're not objecting to the base offense level of
23 20, then what's the basis for the objection where, as I
24 understand your papers, you are arguing that I should only
25 consider the tax loss for the count of conviction which is the

1 tax loss on Count 5 which is \$16,406?

2 MR. PARDO: So the Court is correct. I didn't
3 phrase that as precisely as I should have.

4 With respect to the amounts calculated for the
5 tax loss, the mathematical component of it, that's where we
6 would agree that, if you added up those numbers, the level
7 would be 20. But yes, the Court is correct. We are disputing
8 that that offense level applies based on the proof of willful
9 intent.

10 THE COURT: Okay.

11 MR. PARDO: With respect to the numbers --
12 because the Court began by asking me about the number. The
13 number, we don't necessarily agree that it's 750-, but we will
14 agree that it's between 550- and 1.5, and that's based on the
15 interrogatory responses. But we are objecting to the offense
16 level based on lack of or failure to prove willful intent by
17 clear and convincing evidence.

18 THE COURT: All right. Anything else?

19 MR. PARDO: No.

20 THE COURT: All right. Does the Government have
21 anything you want to add to your papers?

22 MR. ROCHMES: No, Your Honor.

23 THE COURT: All right. The Court makes the
24 following ruling on these -- those issues:

25 The defendant doesn't quarrel with the amount of

1 the tax loss. In fact, the defendant never denied that he
2 ultimately concluded there was a mistake in his personal
3 returns and that the \$1.6 million in expenses paid by GSP
4 should have been reported on his personal 1040 return as
5 additional compensation. In addition, there was never any
6 dispute that the additional compensation resulted in a tax loss
7 of \$751,501.

8 I disagree with the defendant's argument that the
9 Government did not prove by clear and convincing evidence that
10 the defendant's failure to pay was willful. I conclude that
11 the Government has proved by clear and convincing evidence the
12 falsity of the returns and the resulting tax loss was never in
13 dispute.

14 At trial the defense acknowledged that all of the
15 charged tax returns were false because they failed to report
16 additional compensation. The defense also never really
17 challenged Internal Revenue Agent Langer's tax loss
18 computations. Although the defendant denied he had acted
19 willfully, the evidence was more than sufficient to establish
20 by clear and convincing evidence that the defendant
21 intentionally filed the false returns in knowing violation of
22 his legal obligations.

23 The defendant's willfulness can be inferred from
24 the defendant's misclassifications and concealing of GSP's
25 payments of his personal expenses as GSP's business expenses

1 and in the books and records of the company, the defendant's
2 providing false charts of accounts and check registers to the
3 outside accountants, the defendant's knowledge that the
4 accountants would use the false records in preparing the
5 company's financial statement and the corporate returns, and
6 the defendant's failure to inform the -- each of his
7 accountants, Melissa Donovan and Mr. Jensen, of the false
8 classifications.

9 In addition, the sheer magnitude of the tax loss
10 and the defendant's false testimony at trial amply demonstrate
11 that the -- the willfulness. Accordingly, the defendant's
12 objections are overruled. The Court will use the \$751,501 as
13 the amount of tax loss and the base level of -- and concludes
14 that the base level of 20 has been properly calculated by the
15 probation department.

16 The next issue is that the Government argues that
17 the Court should apply the sophisticated means enhancement as
18 set forth in 2T1.1(b)(2). The defendant argues that the Court
19 should not apply the enhancement because there is nothing
20 especially complex or especially intricate in the execution or
21 concealment of the offense. The probation officer in the
22 addendum agrees with the defendant, and the defendant also
23 argues that the Court should follow the probation officer's
24 lead and not apply the enhancement.

25 I will hear from you, Mr. Pardo, but I agree with

1 the Government that this enhancement does apply.

2 MR. PARDO: I would submit on the papers,
3 Your Honor.

4 THE COURT: All right. The Court's ruling is as
5 follows:

6 The evidence in this case demonstrated that the
7 defendant's scheme was complex and especially intricate as
8 detailed in Agent Langer's declaration dated January 16, 2018.
9 The defendant's manipulation of the company books, especially
10 his clever use of the GSP chart of accounts and manipulation of
11 his wages, which he falsely reported on his W-2, and the GSP
12 checks that were written to pay his personal expenses easily,
13 in my view, justifies the application of this enhancement.

14 It was clear from the evidence that, by recording
15 his personal expenses in the GSP business accounts and then
16 failing to report those personal expenses on his W-2, was in an
17 effort and design to hide and conceal his criminal conduct.
18 Even his own accountant, Mr. Jensen, testified that, without
19 conducting a full scale audit of the defendant's additional --
20 full scale audit, the defendant's additional compensation could
21 never be discovered.

22 In addition, the defendant's clever use of
23 misleading or partial names on the GSP checks and check
24 registers so they would appear to be payments for business
25 expenses in an intentional effort to hide the names of the true

1 payees required intricate planning and execution all with a
2 view or purpose of preventing discovery of his theft from his
3 business partners as well as the Federal Government.

4 For example, the defendant's use of misleading
5 payees to hide his GSP checks for payment of personal expenses
6 illustrated at page 16 of trial Exhibit No. 88 where certain
7 personal checks were written to Ferandell Tennis Courts where
8 his actual company checks were written simply to Ferandell, in
9 pages 38 to 43 of trial Exhibit 89 where personal checks were
10 written to SCV Pools whereas the company checks were simply
11 written to SCV.

12 The bottom line is that the defendant for many
13 years executed a complicated scheme which had many moving parts
14 that were carefully planned and executed in a manner that
15 precluded discovery of his tax fraud even by his experienced
16 accountant Mr. Jensen.

17 The next issue that the Court has to resolve in
18 phase one is the Government's request for a two-level increase
19 or two-level enhancement based upon obstruction of justice.
20 The Government argues that the Court should apply a two-level
21 enhancement for obstruction and argue that's the -- and the
22 defendant argues it is not applicable. The probation officer
23 in the addendum left it to the Court to make the determination.

24 I listened carefully to the defendant's testimony
25 at both trials, and I conclude that he lied during the course

1 of both trials. The Government argues that an enhancement for
2 obstructing or impeding the administration of justice is
3 warranted because the defendant perjured himself by testifying
4 to, among other things, that he failed to report additional
5 compensation on his W-2 forms in order to reduce GSP's payroll
6 taxes rather than his own taxes. And two, he admitted the
7 additional compensation from the schedules that he provided to
8 Mr. Jensen because Mr. Jensen's firm already had all of the
9 information necessary to determine the defendant's true income.

10 The Government attaches various exhibits to
11 the -- their sentencing position paper in an effort to
12 demonstrate the defendant's perjury.

13 I will hear from the Government because, quite
14 frankly, given the 9th Circuit's case law with respect to the
15 application of this enhancement, I don't think the Government
16 has met its burden of proof.

17 MR. ROCHMES: I have nothing further to add,
18 Your Honor. If you're convinced by clear and convincing
19 evidence that he intentionally gave false testimony as to
20 material matters such as his willfulness at trial --

21 THE COURT: But it's more than that. If you were
22 sitting down and drafting a perjury Indictment, you would have
23 to set out the specific testimony that the Government would --
24 is claiming was false, and you would have to then set out the
25 evidence that the Government was going to rely on to prove that

1 it was false.

2 I didn't find the defendant's testimony credible,
3 but a general finding that his testimony is not credible is far
4 different from a charge of perjury which basically the
5 9th Circuit is requiring in order to apply this obstruction
6 enhancement.

7 MR. ROCHMES: I understand, Your Honor. We
8 briefed already all the specifics that I could point to. If
9 you don't find that convincing, then I have nothing further to
10 add.

11 THE COURT: Okay. Then the following --
12 Mr. Pardo, do you want to be heard on this?

13 MR. PARDO: No, Your Honor.

14 THE COURT: All right. Although I am somewhat
15 persuaded by the Government's argument, I am unwilling to
16 impose this enhancement because of the strict requirements of
17 9th Circuit case law. For perjury to be deemed obstruction
18 under 3C1.1, the district court must find that the defendant
19 gave false testimony; two, on a material matter; and, three,
20 with willful intent. When as here the proposed sentencing
21 enhancement is based upon the defendant's alleged perjury --
22 perjurious testimony at trial, the Court cannot rely solely on
23 the jury's verdict to find perjury. Rather, the district court
24 must review the evidence and make independent findings
25 necessary to establish perjury. This requires the Court to

1 enter factual findings established by the defendant to satisfy
2 all three elements of perjury as I just indicated -- falsity,
3 materiality, and willfulness.

4 The -- in effect, my reading of the 9th Circuit
5 case law requires to prove -- the Government to prove perjury
6 by the defendant which would involve identifying a statement or
7 testimony made during trial by the defendant and pointing out
8 the evidence that proves the statement is false as well as the
9 other elements of perjury. A finding that the defendant's
10 testimony was not credible simply does not satisfy the
11 9th Circuit case law for the application of this enhancement.

12 As a result, I conclude that the Government has
13 failed to meet its burden of proof, and the Court will not
14 apply this enhancement. The Government is certainly free to
15 present a separate Indictment to the grand jury charging the
16 defendant with perjury if it wishes to pursue this issue.

17 I don't have any other phase one issues that
18 require the Court's resolution that I determined from the
19 papers, but if I missed something, I will hear from counsel.

20 Mr. Pardo, anything in phase one?

21 MR. PARDO: No, Your Honor.

22 MR. ROCHMES: No.

23 THE COURT: All right. Then I will move to phase
24 two.

25 And after calculating the advisory guideline

1 range in phase two, I must consider the Congressional goals of
2 sentencing as set forth in the Sentencing Reform Act and impose
3 a sentence that is sufficient but not greater than necessary to
4 reflect the principles stated in 3553(a) and accomplish the
5 goals or needs of sentencing.

6 Before I hear from counsel, the conclusion of the
7 phase one, I will calculate the base offense level at 20. To
8 that I will add the two-level enhancement for sophisticated
9 means. The total offense level is 22. The defendant's
10 criminal history category is category one, and the resulting
11 advisory guideline range is 41 to 51 months.

12 So I will hear from -- first let me hear from the
13 Government, and then I will hear from the defense and certainly
14 from the defendant if he wishes to be heard.

15 MR. ROCHMES: Yes, Your Honor.

16 THE COURT: I understand from the sentencing
17 position paper that the Government's recommendation in this
18 case is for a sentence of 36 months. I should note for the
19 record that the probation officer's recommendation as set forth
20 in the letter of recommendation to the Court is for a sentence
21 of 33 months.

22 MR. ROCHMES: Right. And if -- the only thing I
23 wanted to add to our papers, Your Honor, is that the point of
24 arguing over three months, which may sound kind of silly, is
25 just that, if you impose a 36-month sentence which is the

1 statutory maximum, I think the message then is that you impose
2 the statutory maximum for this one count. And it might even
3 have been higher given the loss and the defendant's conduct had
4 the jury convicted on more counts.

5 If you impose the 33-month sentence recommended
6 by the probation office, I think it sends a message that, even
7 with a \$751,000 loss, the defendant's testifying falsely at
8 trial, whether or not it rises to the level of perjury and the
9 elaborateness of this scheme, that it just isn't that serious.
10 We feel strongly -- the Government feels strongly that it's
11 important not only to send a message to the defendant but also
12 a message to the public at large that tax crimes are serious
13 offenses and that can result in significant periods of
14 incarceration.

15 That's all I wanted to say, Your Honor. Thank
16 you.

17 THE COURT: All right.

18 MR. DEMIK: Your Honor, I think that the
19 positions have been fairly well laid out. I think there's
20 significant mitigation and equities in this case.

21 As the Court has already noted, Mr. Prezioso has
22 zero criminal history whatsoever. The defense agrees with the
23 probation officer's assessment, that is, respect for the law is
24 intact. He -- we submitted numerous letters. There were more
25 letters than that. At the risk of being repetitive, we

1 submitted relevant ones with the Court along with the video
2 that was done by his family, friends, his church, his
3 community.

4 So, Your Honor, I'm asking the Court to vary
5 downward. I'm not sure imprisonment is necessary. Under the
6 parsimony principle, we're looking at what's sufficient but not
7 greater than necessary. So it is authorized statutorily,
8 Your Honor, to class E felony. And I would ask the Court to
9 consider all the materials that we have submitted and all the
10 materials that the Court has reviewed and also to note the
11 tremendous amount of support in the courtroom for Mr. Prezioso.

12 He has a family. He has a community. He has a
13 church that relies on him and also looks to him for guidance
14 and support that he's given, Your Honor. And I think he's been
15 incredibly generous and charitable with his time and his
16 resources as attested to in those materials. All those
17 materials have been submitted for Your Honor, and Your Honor
18 has reviewed them.

19 I will submit on that.

20 THE COURT: All right. Does your client wish to
21 be heard?

22 MR. DEMIK: Yes, Your Honor.

23 THE DEFENDANT: Good morning, Your Honor.

24 THE COURT: Good morning.

25 THE DEFENDANT: I am deeply remorseful for what

1 has transpired a few years ago. I regret not having asked my
2 accountants more questions, questions about taxes, preparation,
3 expenses. I regret not having more knowledge of the tax law.
4 This was not a scheme to avoid paying personal income taxes. I
5 simply trusted my accountants, their advice and their
6 instructions. I used the charts of accounts numbers that were
7 given to me by the accountants for classification of personal
8 expenses.

9 I understand that there is a tax loss as I have
10 stated in the past, and I believe and I will state so again
11 today. I am responsible for paying that tax loss. I am
12 willing to pay the tax loss.

13 Thank you.

14 THE COURT: All right. Mr. Prezioso, I just --
15 you know, this is a continuation of your trial testimony. You
16 are obviously an intelligent individual. What you're asking me
17 to believe is that the \$1,600,000 of corporate funds that you
18 used would -- for the payment of your personal expenses, that
19 those corporate funds would not be subject to taxation which is
20 just implausible. For someone in your position who is running
21 the company, it's just unbelievable that you can believe that a
22 million six would not only escape corporate taxation but that
23 you could use a million six for your personal expenses and that
24 million six would escape any tax consequences whatsoever. This
25 is not believable.

1 The whole concept of relying on your
2 accountants -- when you hire an accountant to prepare your tax
3 returns, as Mr. Jensen testified, the accountant is not going
4 to undertake an audit of the corporate books and records to
5 find out where these personal expenses may have been -- how
6 they may have been classified. An accountant is paid a limited
7 amount of money for tax preparation.

8 And as he testified -- I believe my memory is
9 correct, at least in the second trial -- that you did not want
10 to hire him to do a corporate audit. And it was only through a
11 corporate audit where those expenses that you concealed in
12 those various accounts would have been disclosed. And it's
13 your obligation as a taxpayer to disclose that additional
14 compensation to your tax preparer. There's no way in the world
15 a tax preparer who is paid maybe \$2,500 to do a personal tax
16 return could ever have made a determination that there was a
17 million six -- \$1,600,000 out there that needed to be found and
18 characterized as additional compensation.

19 I just -- I understand what you're saying. But
20 in terms of what you're saying here this morning, to me it's
21 just a continuation of the lies that you told during your trial
22 testimony.

23 THE DEFENDANT: Your Honor, I know trial is over.
24 It doesn't matter much. But the \$1.6 million that we didn't
25 contest at trial was grossly overstated and doesn't account for

1 any legitimate business expenses paid by the corporation. The
2 IRS or the Government's calculation did not give me any credit
3 for any of those years for legitimate business write-offs that
4 were not considered personal expenses.

5 Every month on a month-by-month basis for every
6 one of those years, we, myself, GSP, submitted chart of
7 accounts reports to Caven & Associates and to Bob Jensen
8 classifying the expenses by chart of accounts numbers that were
9 provided by the accountants to use for those expenses. There
10 was no effort there to conceal or hide the expenses.

11 THE COURT: And so I take it that you would say
12 that, when you submitted the -- in the particular tax year,
13 which had the hundred thousand dollars for the pool that you
14 called to the accountant's attention, by the way, don't forget
15 that I put this pool expenditure in whatever the account was --
16 I don't remember what it was -- so that needs to be taken out
17 and it needs to be attributed to me as additional compensation.
18 Or more importantly, since you at -- during the course of
19 certain of the years at the company had control over the
20 information that went into the W-2 forms, that you would have
21 then reported that on your W-2 form.

22 THE DEFENDANT: Your Honor, I didn't process the
23 W-2's. And my understanding back then is different than what
24 it is today. I didn't understand back then that personal
25 expenses were classified as income, nor was I instructed as

1 such by either of my accountants, Caven & Associates or KKAJ,
2 Bob Jensen's firm. I didn't give any instructions to my
3 accountant on how to process payments or expenses because I'm
4 not a tax preparer. We had conversations -- multiple
5 conversations and meetings with my accountants about the
6 payment of personal expenses, and I trusted them to properly
7 handle those expenses on corporate and personal returns.

8 THE COURT: And the response to the civil lawsuit
9 that was filed by Gottardi was, gee, I was allowed to charge
10 all these expenses based upon my -- and I recognize that you
11 turned the company around. You were a very hard worker, and
12 you, in effect, saved the company. And I also don't dispute
13 that, as part of that, your business partners, one of which was
14 your father, indicated that you would be permitted to have
15 certain of your personal expenses paid.

16 But I don't think realistically that you ever
17 expected that your business partners would allow you to use a
18 million and a half dollars of corporate funds in order to pay
19 your personal expenses to the detriment of the other
20 shareholders. In fact, that's what led to all these problems
21 is because Mr. Gottardi discovered what you were doing, filed a
22 civil lawsuit, and had a receiver appointed to stop.

23 So to me this is a dual track. One, you were
24 using the hiding of these expenses in these various accounts,
25 one, to defraud your business partner so he couldn't determine

1 what it was you were charging in terms of your personal
2 expenses; and, two, it became convenient in order to effect the
3 tax fraud against the Federal Government.

4 If you truly thought that the -- your business
5 partner believed that you were entitled to an additional --
6 let's just say a million dollars, why didn't you go to him and
7 say, look, I now have turned the company around, you recognized
8 that I have turned the company around, so why don't you
9 increase my salary by a million dollars?

10 THE DEFENDANT: Your Honor, as I believe I stated
11 in trial, both trials, there was an agreement between the
12 shareholders to pay me back the money that GSP could not pay me
13 in the years that I was entitled to a salary per my employment
14 agreement. And the decision made between the shareholders and
15 our accountant was to pay that back in the form of personal
16 expenses.

17 We have not gone to trial yet on the state court
18 matter with George Gottardi. There's one truth in
19 George Gottardi's claim is that the company paid personal
20 expenses. But the false allegation is that he was not aware of
21 that. We have not gone to trial over that matter.

22 George was certainly aware. He was the one that
23 recommended that we pay myself back in that manner, not only
24 for the payment of personal expenses to repay me for the
25 salaries that GSP was unable to pay me in the years we had

1 financial hardship, it was also agreed that they would pay my
2 personal expenses for saving the company out of this situation
3 we were in.

4 THE COURT: All right. Anything else?

5 THE DEFENDANT: No. Thank you, sir.

6 THE COURT: All right. Is there any reason why
7 sentence should not be imposed?

8 MR. DEMIK: No, Your Honor.

9 MR. ROCHMES: No, Your Honor.

10 THE COURT: All right. In fashioning this
11 sentence, I have made an individualized assessment based upon
12 the facts and arguments presented by the parties, and I have
13 considered and applied all of the 3553(a) factors. However,
14 I'm going to discuss several of those factors.

15 The first is the nature and circumstances of the
16 offense. The Court is very familiar with the nature and
17 circumstances of this offense because I presided over both
18 trials and several pretrial hearings. The first trial ended in
19 a mistrial due a hung jury in which two jurors concluded that
20 they did not believe the Government had proven its case and the
21 second trial which resulted in a guilty verdict on Count 5.

22 Count 5 alleges that in March of 2014 the
23 defendant violated Section 7206(1) by making and subscribing to
24 a false Form 1040 tax return for the calendar year 2013.
25 Specifically, the defendant's Form 1040 falsely reported the

1 defendant's adjusted gross income for the calendar year 2013
2 was \$324,243, and the defendant knew that he had received more
3 compensation than he reported.

4 Although I disagreed with their decision because
5 of the overwhelming evidence of the defendant's guilt, I
6 understand why the jury in the second trial reached the not
7 guilty verdicts on the remaining counts of the Indictment.

8 The defendant's tax scam, in my view, directly
9 resulted from his ability to control and manipulate the
10 operations and the books and records of GSP including check
11 writing, W-2 preparation, and various accounts of -- various
12 accounts of the GSP Precision, Inc. In my view, it was a
13 sophisticated scheme that allowed the defendant to divert more
14 than \$1.6 million from the GSP corporate bank accounts and
15 lines of credit for his own personal benefit.

16 In general, the scheme was carried out by failing
17 to report the payment of his personal expenses by GSP, his
18 additional compensation on his W-2, mischaracterizing and
19 posting the additional compensation as legitimate business
20 expenses in GSP's books and records, specifically the charts of
21 accounts, providing false and incomplete records to the
22 company's outside accountants to use in their preparation of
23 the financial statements of the company and the defendant's
24 personal tax returns, and his deliberate failure to disclose to
25 his accountants that he had received additional compensation

1 from GSP.

2 The scheme went on for several years, and it
3 abruptly ended in July of 2013 when his business partner,
4 George Gottardi, discovered that the defendant was looting the
5 company. And by that time the defendant had paid himself close
6 to \$1.6 million in -- by payment of his personal expenses. As
7 I indicated, as a result of that, a civil action was filed in
8 order to stop the defendant's looting of the company. The
9 looting stopped when the receiver was appointed in the state
10 court action that was filed against the defendant.

11 What is truly sad is that the defendant
12 successfully saved GSP from bankruptcy and -- even taking out a
13 second on his home to provide additional capital necessary to
14 rescue GSP from a potential bankruptcy, and he single-handedly
15 turned the business around. There is no doubt that he worked
16 very hard in the ensuing years and that his business partners
17 had agreed that, in recognition of his efforts, that he could
18 charge some of his personal expenses to GSP. In fact, the
19 defendant has used that agreement to defend his state court
20 action.

21 However, although his partners agreed that he
22 could use company money to pay some of his personal expenses,
23 they didn't give him a blank check. What obviously happened is
24 the defendant became greedy and set out to enrich himself at
25 the expense of his partners to the tune of over a million

1 dollars.

2 As I indicated, if the defendant truly believed
3 he was entitled to additional compensation, he could have
4 simply asked his partners for an increase in his salary. Of
5 course, given the outrageous amounts of money, the drain on the
6 company's finances, that proposal would have been soundly
7 rejected. In my view, this factor favors a significant prison
8 sentence.

9 The next factor that I have considered is the
10 history and characteristics of the defendant. Defendant is
11 47 years old. He's married, and his wife works as a registered
12 dietitian. They have three children. The defendant obviously
13 has a very close relationship with his children, and obviously
14 he is very concerned about his absence and the detrimental
15 effect it will have on his family, especially on one of his
16 sons, Brian and the financial stress that his family will
17 experience because he will no longer be able to earn income to
18 support his family. Unfortunately the time to think about the
19 consequences to his family was when he was contemplating
20 engaging in this criminal conduct, not years later after he got
21 caught.

22 The defendant is well-educated. He has a B.S. in
23 computer information systems, and he has a strong record of
24 employment. He began in a computer support position in 1991 to
25 1992. Thereafter, he was employed by GSP. He began as a

1 machine operator, and when given the opportunity by his father
2 and his partner, he did a truly remarkable job in not only
3 saving the company but turning it around, making it financially
4 very profitable. The defendant was creative, very hardworking
5 as seen from his wife's letter, devoted 100 percent of his time
6 and energy to developing and promoting the company business.

7 Unfortunately he got greedy along the way in what
8 was and should have been a very comfortable lifestyle turned
9 into a disaster not only for the defendant but for his entire
10 family because he now faces a lengthy prison sentence and
11 continuing civil litigation with not only his business partner
12 but the Internal Revenue Service.

13 From 2015 to the present, the defendant has been
14 employed at Lee Manufacturing as a manager of approximately
15 20 workers at a salary of \$3,250 a month which pales in
16 comparison to his legitimate income at GSP.

17 The defendant has no substance abuse or mental
18 health issues except for bouts of depression. The defendant
19 has several medical issues that I won't discuss out of respect
20 for his privacy. However, I note that none of these issues
21 appear to be serious, and all can be adequately treated by the
22 Bureau of Prisons.

23 I have reviewed the numerous letters of support,
24 and they all attest to the defendant's good character and
25 conduct, and he obviously has the love and support of his

1 family and friends.

2 The defendant's wife's letter was very powerful
3 in her statements and comments on the video are some of the
4 most powerful that I have been presented with since I have been
5 on the bench. I did consider her plea for leniency and the
6 effect of the defendant's prolonged absence from the family,
7 and her comments were very helpful in fashioning the
8 defendant's sentence.

9 I also reviewed the video, and the video does
10 contain many mitigating factors. The comments and observations
11 of his family and friends in discussing what a good friend he
12 is, his charitable efforts in Haiti were all very helpful. I
13 note that at least two of those individuals on the video
14 appeared as character witnesses for the defendant.

15 The defendant did not and has not accepted
16 responsibility for his criminal conduct, and although counsel
17 states that the defendant understands and accepts the jury's
18 verdict, I doubt that's true. Mr. Prezioso went to trial which
19 is his right, but as the Supreme Court stated in
20 *United States versus Dunnigan*, what was not his right was to
21 testify untruthfully and in a manner that was obviously
22 designed to mislead the jury and secure an acquittal.

23 In the first trial, he was somewhat successful in
24 at least two jurors decided that they could not vote guilty
25 even though a majority of the jurors had no doubt that the

1 defendant was guilty. It almost worked again in his second
2 trial, but in the end the jury chose not to believe his pack of
3 lies and found him to be guilty of Count 5.

4 Although I did not grant the Government's
5 requested enhancement for obstruction because I concluded the
6 Government failed to meet its burden of proof, I was absolutely
7 flabbergasted and amazed by the defendant's testimony which, in
8 effect, blamed his criminal conduct on his deceased accountant
9 Mr. Caven.

10 The defendant's testimony that he could receive
11 or enjoy over \$1.6 million in tax-free benefits because he was
12 able to arrange for GSP to pay his personal expenses knowing
13 that the 1.6 would escape taxation at the corporate level was
14 simply nonsense and preposterous given the defendant's
15 intelligence, sophistication, and business acumen.
16 Nonetheless, he persisted in this story repeating his testimony
17 to the jury, albeit, in truncated form during the second trial
18 and again this morning in his comments to the Court.

19 Obviously the defendant has not and will never
20 express remorse and continues to blame his dead accountant for
21 getting him into this mess. Although the defendant has many
22 good qualities as seen from his friends on the video and
23 letters of support, his criminal conduct and efforts to mislead
24 two juries amply demonstrates the defendant's total lack of
25 respect for the law and the defendant's extreme arrogance as

1 evidenced by his demeanor while testifying at trial which leads
2 me to the conclusion that I have reached in the majority of
3 white collar crimes over the past decade which is defendants
4 such as Mr. Prezioso never believe that they will get caught
5 and, if they are caught, they certainly will never go to
6 prison. Unfortunately that mistake is -- that belief is
7 mistaken.

8 The Court's consideration of this factor, the
9 history and characteristics of the defendant deserve some
10 degree of leniency.

11 The Court has also considered and taken into
12 account the advisory guideline range, and I find that the
13 guideline range does not adequately take into consideration the
14 specific facts and circumstances of this case and the range
15 established by the guideline is greater than necessary to
16 satisfy the purposes of sentencing.

17 In fashioning the sentence, the Court has also
18 considered the goals of sentencing, and the Court concludes
19 that its sentence is sufficient but not greater than necessary
20 to meet the four purposes of sentencing.

21 I have already concluded that this is a very
22 serious offense and requires a correspondingly long sentence so
23 as to promote respect for the law and provide a just
24 punishment.

25 As to deterrence, the Court concludes that the

1 facts of this case, both specific and general deterrence, are
2 appropriate goals of a just sentence. Specific deterrence will
3 discourage this defendant from committing such crimes again,
4 and general deterrence will be satisfied because the sentence
5 will send a clear message that this type of crime will not be
6 tolerated by the law.

7 General deterrence is extremely important in this
8 type of case. The only way to prevent or combat the attitude
9 of taxpayers who think they can buy their way out of prison
10 with payment of back taxes and penalties, if they ever get
11 caught, is to impose a significant prison sentence. To permit
12 a defendant to avoid a meaningful prison term while
13 incarcerating thieves and other nonviolent offenders of a lower
14 social status would trivialize the serious nature of the white
15 collar offense involved in this case.

16 In this case there is simply no way I can fashion
17 a sentence that reflects the seriousness of the offense and
18 which would promote respect for the law and provide just
19 punishment without imposing a prison sentence.

20 So for all of the foregoing reasons, the Court
21 imposes the following sentence:

22 It is ordered that the defendant shall pay to the
23 United States a special assessment of \$100 which is due
24 immediately. Any unpaid balance shall be due during the period
25 of imprisonment at the rate of not less than \$25 per quarter

1 and pursuant to the Bureau of Prisons Inmate Financial
2 Responsibility Program.

3 Pursuant to Section 5E1.2(a), all fines are
4 waived as the Court finds that the defendant has established he
5 has been unable to pay and not likely to become able to pay a
6 fine.

7 Pursuant to the Sentencing Reform Act of 1984,
8 it's the judgment of the Court that the defendant is hereby
9 committed on Count 5 of the nine count -- we have an issue with
10 respect to the First Superseding Indictment. You filed it, and
11 we dismissed Count 9. We think -- the jury verdict was -- so
12 we didn't have to go back and change the jury instructions
13 referred to the original Indictment. So I think the better
14 course of action, unless counsel disagree, is to dismiss the
15 First Superseding Indictment, and the sentence that I am
16 imposing is consistent with the jury's verdict which is guilty
17 of Count 5 on the original Indictment.

18 Does anybody disagree?

19 MR. DEMIK: No objection.

20 MR. ROCHMES: No. The Government then moves to
21 dismiss the Superseding Indictment.

22 THE COURT: So I take it you agree?

23 MR. ROCHMES: Yes.

24 THE COURT: Mr. Demik, you also agree?

25 MR. DEMIK: Yes, Your Honor.

1 THE COURT: All right. So then let me go back.

2 Pursuant to the Sentencing Reform Act of 1984,
3 it's the judgment of the Court that the defendant is hereby
4 committed on Count 5 of the Indictment to the custody of the
5 Bureau of Prisons for a term of 24 months.

6 Upon release from imprisonment the defendant
7 shall be placed on supervised release for a term of one year
8 under the following terms and conditions:

9 One, the defendant shall comply with the rules
10 and regulations of the United States Probation Office and
11 General Order 01 -- General Order 05-02;

12 Two, during the period of community supervision,
13 the defendant shall pay the special assessment in accordance
14 with this judgment's orders pertaining to such payment;

15 Three, the defendant shall truthfully and timely
16 file and pay taxes owed for the year of conviction and shall
17 truthfully and timely file and pay taxes during the period of
18 community supervision. Further, the defendant shall show proof
19 to the probation officer of compliance with this order;

20 Four, the defendant shall cooperate in the
21 collection of a DNA sample from the defendant.

22 The drug testing condition mandated by statute is
23 suspended based upon the Court's determination that the
24 defendant poses a low risk of substance abuse.

25 I want to advise the defendant, if you wish to

1 appeal your conviction and sentence, you must file a Notice of
2 Appeal within 14 days of today or you will lose your right to
3 an appeal. If you're unable to afford an attorney for your
4 appeal, one may be appointed at no cost to you.

5 The Government has dismissed the First
6 Superseding Indictment.

7 What's the Government's position with respect to
8 self-surrender?

9 MR. ROCHMES: We don't have a problem with
10 self-surrender.

11 THE COURT: All right. It is further ordered
12 that the defendant surrender himself to the institution
13 designated by the Bureau of Prisons on or before -- Mr. Demik,
14 do you have a date in mind?

15 MR. DEMIK: Normally my understanding is it's
16 five weeks to designate, Your Honor. So I would ask for six so
17 he can report directly to the facility.

18 THE COURT: All right. I thought it was taking
19 less time now.

20 MR. DEMIK: I don't know that.

21 THE COURT: All right. Well, I will give you
22 four weeks. If you need more time -- because I want
23 Mr. Prezioso to be able to report to the institution.

24 It is ordered that the defendant surrender
25 himself to the institution designated by the Bureau of Prisons

1 on or before March 12, 2018. In the absence of such
2 designation, the defendant shall report on or before the same
3 date and time to the U.S. Marshal located in the Roybal
4 building at 255 East Temple.

5 Do you want me to make a recommendation for a
6 Southern California facility?

7 MR. DEMIK: Please.

8 THE COURT: All right. I will make that
9 recommendation.

10 All right. Anything else?

11 MR. ROCHMES: Yes, Your Honor. You made one
12 factual statement or one statement that was incorrect, and I
13 just wanted to clarify that the defendant faces continuing
14 litigation arising from the dispute with the shareholders, and
15 that's not the case because the -- in the bankruptcy, the case
16 was dismissed for failure to prosecute.

17 THE COURT: That's not what he said. He said
18 this morning it hasn't gone to trial yet.

19 MR. ROCHMES: It hasn't gone to trial, and it
20 will never go to trial because it has been dismissed.

21 THE COURT: Okay. I stand corrected if there is
22 a correction to be made.

23 All right. Anything else?

24 MR. DEMIK: No, Your Honor.

25 THE COURT: All right. Thank you very much.