

EXHIBIT

A

MICHAEL LEE SNYDER,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

17-7157

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF WYOMING
FILED
U.S. DISTRICT COURT
DISTRICT OF WYOMING

APR 18 2005

UNITED STATES OF AMERICA,

Plaintiff,

vs.

MICHAEL LEE SNYDER,

Defendant.

Betty A. Griess, Clerk
Cheyenne

Case No. 04-CR-00118-J

Cheyenne, Wyoming

March 1, 2005

8:44 a.m.

CERTIFIED COPY

TRANSCRIPT OF SENTENCING PROCEEDINGS

BEFORE THE HONORABLE ALAN B. JOHNSON
UNITED STATES DISTRICT JUDGE

APPEARANCES:

For the Plaintiff:

MR. GREGORY A. PHILLIPS
Assistant United States Attorney
UNITED STATES ATTORNEY'S OFFICE
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Cheyenne, WY 82003-0668

For the Defendant:

MR. ROBERT R. ROGERS
Assistant Federal Public Defender
OFFICE OF THE FEDERAL PUBLIC DEFENDER
320 West 25th Street
Cheyenne, WY 82001

Court Reporter:

JULIE HEDELSON, RMR, CRR
Official Court Reporter
2120 Capitol Avenue, Room 2228
Cheyenne, WY 82001
(307) 778-0078

1 (Proceedings commenced 8:44 a.m.,
2 March 1, 2005.)

3 THE COURT: Thank you. Please be seated.
4 Mr. Phillips.

5 MR. PHILLIPS: Good morning, Your Honor. May it
6 please the Court, Mr. Rogers. The case for consideration next
7 is United States of America versus Michael Lee Snyder, Docket
8 04-CR-118-J, and the case is set this morning for sentencing.

9 The defendant signed a Plea Agreement, Your Honor, on
10 December 13th, 2004, which was filed four days later, by which
11 he pled guilty to the sole count of an Indictment alleging
12 felon in possession of a firearm in violation of 18 United
13 States Code Sections 922(g)(1) and 924(a)(2).

14 Just a quick review of the terms of the Plea
15 Agreement: The United States agreed to recommend three levels
16 off for acceptance of responsibility and to recommend the low
17 end of any applicable guideline range. And there is pencilled
18 in on the Plea Agreement, Your Honor, that the United States
19 will give the defendant an opportunity to proffer and attempt
20 to provide substantial assistance. That meeting has not
21 occurred yet, but we understand that that will be occurring in
22 the future. To the extent the defendant does provide the
23 necessary underlying substantial assistance, then we would be
24 back within a year to file a motion for some sort of
25 reduction.

1 Presentence report, Your Honor, the Government had no
2 objections. The defendant offered the objection based on
3 Almendarez-Torres, namely, that the underlying felony
4 convictions would have to be proved beyond a reasonable doubt
5 to a jury. And we've had that argument before. Suffice it to
6 say, the United States' response is simply that Apprendi
7 recognizes that and continues that rule in place from
8 Almendarez-Torres.

9 The guideline, Your Honor, there are dual
10 calculations. The one that is actually going to apply in this
11 case is based on the armed career criminal guideline, which
12 provides a base offense level of 33. The competing guideline
13 calculation would be, if he did not have those underlying
14 felony convictions, would be a base offense level 24, an
15 enhancement of two levels for a stolen firearm, another
16 enhancement two levels for using minors to help commit this
17 offense, which would have yielded a total offense level of 28.
18 Accordingly, because he is an armed career offender, he gets
19 five additional levels is what it amounts to.

20 His criminal history, Your Honor, is a serious one.
21 He has 17 points, plus two for the recency of this offense in
22 relation to others. Accordingly, 19 criminal history points,
23 which is on the upper side of Criminal History Category VI.
24 With the armed career offender designation, Your Honor, the
25 applicable guideline range is 168 to 210. The statute trumps

1 that, at least on the bottom end of that, and requires a
2 180-month sentence. As mentioned, the United States has
3 agreed it will recommend the low end of an applicable
4 guideline. Accordingly, that would be 180 months, Your Honor,
5 which should run concurrently to the undischarged term of
6 prison that he is serving right now for the burglary.

7 THE COURT: Mr. Rogers and Mr. Snyder.

8 Mr. Snyder, would you raise your right hand and be
9 sworn.

10 (The defendant was sworn.)

11 THE COURT: You are Michael Lee Snyder?

12 THE DEFENDANT: Yes.

13 THE COURT: Mr. Snyder, you've been taking
14 medications, as I understand it, for a seizure disorder?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: Have you been receiving the medications?

17 THE DEFENDANT: Uh, finally they're getting them
18 right. It's taken Rawlins six years -- six months to get my
19 medications right, but yes.

20 THE COURT: Nevertheless, you have been having
21 seizures about once a week; is that correct?

22 THE DEFENDANT: At least once a week, if not more.

23 THE COURT: Yeah.

24 THE DEFENDANT: I've had some three days in -- three
25 times in one day.

1 THE COURT: So it seems to be getting worse; is that
2 correct?

3 THE DEFENDANT: Too much stress around me.

4 THE COURT: Have you received a copy of the
5 presentence investigation report?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: Have you reviewed it and read it with
8 your attorney, Mr. Rogers?

9 THE DEFENDANT: Yes, I did, Your Honor.

10 THE COURT: All right. Do you understand the
11 calculation under the guidelines in this matter?

12 THE DEFENDANT: At one point I really don't, because
13 them saying with the delivery of marijuana and two burglary
14 charges that carries 15, I've already done time in prison for
15 them charges. I don't see how that should go and affect me
16 for 15 years. I could understand 10 years, but 15 I just do
17 not agree with.

18 THE COURT: It's a heavy-duty sentence; there's no
19 question about it.

20 Looking at the presentence report, it is not often
21 that I see one where a child brought into this world, you,
22 namely, went through so much at such an early age. It was a
23 pretty rough go.

24 THE DEFENDANT: I've been having bad trouble
25 throughout my whole life. Haven't had a father to

1 take -- tell me don't do this, don't do that.

2 THE COURT: Well, it just continued on, didn't it?

3 And it's just been one contact with law enforcement after
4 another, but more than that, it really has not given you a
5 chance to develop any meaningful vocational skills or -- you
6 literally kind of have lived on the edge all of your life.

7 Mr. Rogers, anything you wish to say by way of the
8 objections you filed in this matter?

9 MR. ROGERS: Your Honor, I do wish to preserve an
10 objection for Mr. Snyder on the issue in my objection letter,
11 which is that Mr. Snyder was indicted under a statute that
12 carries a 10-year maximum, felon in possession of a firearm.
13 Because of the armed career criminal status, the current law
14 would seem to say that he can be sentenced under a statute
15 under which he wasn't charged, Section 924(e), which carries a
16 15-year minimum. The U.S. Supreme Court has allowed this to
17 occur, but I wish to preserve an objection because I think the
18 Supreme Court is likely to overrule this what is now a narrow
19 exception to the rule from Apprendi that allows prior
20 convictions to be outside the requirement of Apprendi.

21 Now that the Supreme Court has fixed, so to speak,
22 the constitutional issues in the sentencing guidelines by
23 making them advisory, there are two glaring areas that stand
24 out from what is otherwise a fairly consistent rule, and I
25 refer to the Apprendi rule, and that is the armed career

1 criminal statute and the aggravated illegal reentry by an
2 alien statute, both of which depending -- if the person has
3 sufficient priors, they can be sentenced to a greater sentence
4 than the sentence attached to the crime to which they are
5 charged. I think, given the reluctance expressed by Justice
6 Thomas and the criticism of the previous decision allowing
7 this in Supreme Court opinions, I think we are squarely faced
8 with the issue they are likely to reconsider.

9 So for those reasons Mr. Snyder objects to being
10 sentenced above the statutory maximum of 10 years because he
11 was not indicted with having priors and the Indictment did not
12 reference the armed career criminal statute at all. Thank
13 you.

14 THE COURT: Mr. Snyder, do you understand what
15 Mr. Rogers is saying?

16 THE DEFENDANT: Yes, Your Honor.

17 THE COURT: He is preserving an issue on appeal in
18 your behalf related to this armed career criminal
19 determination at this point, which is supported by Supreme
20 Court law, but he feels that if the Supreme Court is faced
21 with this issue again, squarely, that there may be some relief
22 for you there.

23 I would note on the record that Mr. Snyder is a
24 person who's been looked at by many, many people. He is
25 probably the poster child to indicate that government doesn't

1 do a very good job of raising children, although they're well
2 intentioned and try, but clearly possesses better than or
3 superior intelligence and is capable of understanding and
4 comprehending what is happening.

5 Mr. Snyder, anything that you wish to say before the
6 Court pronounces sentence in this matter?

7 THE DEFENDANT: Like I said before, I do not believe
8 that I should get this 15 because I've already served time on
9 them past records. It's just like you guys going and doing
10 railroad tracks on me. I just -- I can understand getting the
11 10 years because, yes, I had a gun. It wasn't mine, but, yes,
12 I was not supposed to be in possession of it.

13 THE COURT: I understand your feelings and certainly
14 have empathy for what you are contending in this matter. The
15 Court has to find, by virtue of the guidelines, and is
16 justified by, frankly, the record that comes before the Court
17 that this is an appropriate armed career criminal finding in
18 the presentence report. The Court adopts those findings. I
19 want to spend a little time with you and go through the
20 justification that is given for the sentence in this matter.

21 Mr. Snyder is 32 years of age. This is his fifth
22 felony offense and is felon in possession of a firearm. His
23 other criminal conduct dates back to the age 11, numerous
24 juvenile adjudications. Placed in custody of the Department
25 of Public Assistance on several occasions. Out-of-home

1 placements, Cathedral Home, Youth Crisis Center, Virginia
2 Hearst Detention Home, St. Joseph's Children's Home, until the
3 age of 18 when he was kicked out and put on his own.

4 The defendant's adult history has numerous
5 shoplifting and theft convictions, public intoxication, retail theft,
6 falsely obtaining goods, disturbance, delivery of marijuana,
7 indecent exposure, burglary, possession of marijuana, battery,
8 reckless endangering, failure to appear, and property
9 destruction.

10 He suffered physical abuse at the hands of his
11 mother's boyfriend and the father of his half-sister, a man by
12 the name of Gill Grabill, who was a discredited police
13 officer, as I understand, from Michigan --

14 THE DEFENDANT: Yes.

15 THE COURT: -- who also inflicted permanent brain
16 damage on Mr. Snyder's sister. He was present when his mother
17 shot herself in the chest with a shotgun. And as a result of
18 her injuries, at age 10 or 11 Mr. Snyder was kind of left out
19 on his own to survive in the world. Placed in a foster care
20 situation where he was sexually molested by older boys when he
21 was 11 years of age. This all surfaced when he acted out what
22 had been acted on him. He was -- the placements then followed
23 in quick order.

24 He suffers from a significant seizure disorder and
25 has been medicated off and on for over 20 years. He's never

1 been diagnosed with any specific mental illness. However,
2 there have been four suicide efforts, and he experiences
3 auditory hallucinations. Has been an abuser of marijuana and
4 methamphetamine perhaps as a means to self-medicate or try to
5 feel better.

6 The record in this matter reflects a person who lacks
7 any significant vocational skill. Because of his medical
8 condition, he is somewhat isolated from the rest of the
9 population and requires consideration for special management
10 in that regard or services be made available to him. If
11 released into the community, I think he reflects a very high
12 risk of reoffending because he really knows nothing else.

13 Certainly drug testing would be appropriate.
14 Substance abuse treatment and mental health services should be
15 afforded to him. It is important that he receive his epilepsy
16 medication. And with the history of sexual victimization and
17 perpetration, there should be a psychosexual evaluation. I
18 would further think that at some point he should be monitored
19 in that regard and, from the mental health standpoint, get to
20 the root of the auditory hallucinations that are apparently
21 plaguing him at this time.

22 His objection in this matter is one that is and will
23 be preserved. Apprendi does exclude statutory enhancements
24 based upon prior -- specifically excludes from its reach
25 enhancements based upon prior convictions. Be that as it may,

1 I'm familiar with the argument that has been made by
2 Mr. Rogers and his reasons for preserving it.

3 There remains for consideration by this Court the
4 possibility, after a proffer, of a downward departure upon
5 recommendation of the Government. Whether or not that will
6 occur I suppose will depend largely on the proffer and the
7 evaluation of whether or not the defendant is truthful.

8 With those thoughts in mind, the Court will impose
9 sentence under the Sentencing Reform Act of 1984, which is
10 considered in an advisory way, and based upon the calculation
11 in this matter of a sentencing level under armed career
12 criminal of level 33, less three, which takes him to level 31,
13 and 19 criminal history points, for criminal history level VI.
14 The sentencing range is 168 to 210 months, and because of the
15 armed career criminal it is 180 months. And pursuant to the
16 Plea Agreement in this matter, the sentence will be imposed at
17 the low end, with the possibility of a proffer within the next
18 few days and, within one year, a further adjustment to the
19 sentence.

20 In addition, the defendant is preserving his appeal
21 right in this matter and, significantly, must file a Notice of
22 Appeal within 10 days from the date of the Judgment and
23 Sentence in this case in order to preserve that appeal.

24 He is committed to the custody of the U.S. Bureau of
25 Prisons to be imprisoned for a term of 172 months and 11 days,

1 to be served concurrently with his State of Wyoming sentence
2 from the First Judicial District, Docket No. 28-110. The
3 sentence reflects an adjustment of seven months and 20 days
4 served on a related state sentence, for which credit cannot be
5 granted by the Bureau of Prisons pursuant to Title 18 United
6 States Code Section 3585.

7 Upon release from imprisonment, the defendant shall
8 be placed on supervised release for a term of five years.
9 Within 72 hours of release from the custody of the Bureau of
10 Prisons, the defendant shall report in person to the probation
11 office in the district where he is released.

12 These are the conditions, and there are a lot of
13 them: Defendant shall not commit any crimes, federal, state,
14 or local. Shall abide by standard conditions of supervised
15 release recommended by the Sentencing Commission. Shall not
16 purchase, possess, or use firearms, ammunition, or explosives
17 in any manner. Supervised release must be revoked for
18 possession of a firearm. Defendant shall not illegally use or
19 possess any controlled substance. Again, revocation of
20 supervised release is mandatory for possession. Defendant
21 shall submit to drug tests required by law, that is, one
22 within 15 days of release and at least two periodic tests
23 thereafter. Pursuant to Public Law 108-405, defendant shall
24 submit to DNA collection while incarcerated or at the
25 direction of the U.S. Probation Office.

1 Defendant shall make special assessment and fine
2 payments ordered by the Court. He shall be required to notify
3 the Court, through the Probation Office, of any material
4 change in his economic circumstances affecting his ability to
5 meet these monetary obligations. Any financial obligation not
6 paid immediately through the Bureau of Prisons shall be paid
7 in installments of at least \$50. All payments shall be
8 completed no later than 30 days prior to the end of the term
9 of supervised release.

10 The defendant shall not use or possess alcohol or
11 frequent places where it is bought or served, shall
12 participate in substance abuse treatment and testing as
13 directed by the probation officer, shall obtain a mental
14 health evaluation and follow all treatment recommendations
15 approved by the -- in a program approved by the Probation
16 Office.

17 Shall submit his person, residence, and office to
18 search conducted by a probation officer at a reasonable time
19 in a reasonable manner based upon reasonable suspicion of
20 contraband or evidence of violation of a condition. Failure
21 to submit to search may be grounds for revocation. And the
22 defendant shall warn other residents of the premises that it
23 is subject to search pursuant to this condition.

24 Defendant has the ability to pay a fine but not
25 within the guidelines. The fine imposed is \$1,000, inclusive

1 of penalties and interest if applicable. The fine is due
2 immediately, and any amount not paid immediately shall be paid
3 through the Bureau of Prisons Inmate Financial Responsibility
4 Program. The special assessment of \$100, as well, is paid
5 under the Inmate Financial Responsibility Program through the
6 Office of the Clerk of the District Court by cashier's check
7 or money order.

8 It is recommended that the defendant participate in
9 the Bureau of Prisons 500-hour Residential Drug and Alcohol
10 Treatment Program.

11 I would further say this. I don't know when the
12 defendant may be released to federal custody by the state
13 authorities with regard to the sentence that he is presently
14 serving. My guess is pretty quick, just simply based upon the
15 medications that he requires to operate on a day-to-day basis
16 and the expense of those medications. I don't know, and don't
17 count on anything in that regard.

18 THE DEFENDANT: So I don't have the right to max my
19 three-to-five-year sentence state time first?

20 THE COURT: I'm not sure I understand. You're
21 receiving credit for your time. You are serving it
22 concurrently.

23 THE DEFENDANT: I understand it's running concurrent,
24 but I'm wondering will I be able to do my three years nine
25 months in state time there first before I start doing my

1 federal time?

2 THE COURT: I have no idea what the state may choose
3 to do. I just don't control them. They make their own
4 decisions.

5 THE DEFENDANT: Okay.

6 THE COURT: I would recommend, further, that this
7 defendant at the earliest opportunity receive a medical
8 evaluation in connection with his placement by the Bureau of
9 Prisons, in that he does have a significant seizure disorder,
10 has been complaining of auditory hallucinations and other
11 difficulties.

12 Any recommendation about placement?

13 (The defendant and counsel consult.)

14 MR. ROGERS: Your Honor, Mr. Snyder is not going to
15 request a specific geographic location. It's his wish that
16 the Bureau of Prisons put him in the best location for his
17 medical conditions and at the lowest security level consistent
18 with his classification.

19 THE COURT: That will be the recommendation of the
20 Court.

21 MR. ROGERS: Thank you, Your Honor.

22 THE COURT: Mr. Phillips, anything further?

23 MR. PHILLIPS: Nothing further. Thank you.

24 THE COURT: Very well. I sincerely hope that
25 Mr. Snyder can receive some of the medical treatment that he

1 needs to address his situation and perhaps can find some sort
2 of vocational opportunity that will sustain him in the future.

3 We'll stand in recess.

4 (Proceedings concluded 9:11 a.m.,
5 March 1, 2005.)

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C E R T I F I C A T E

I, JULIE HEDELSON, Official Court Reporter for the
United States District Court for the District of Wyoming, a
Registered Merit Reporter and Certified Realtime Reporter, do
hereby certify that I reported by machine shorthand the
proceedings contained herein on the aforementioned subject on
the date herein set forth, and that the foregoing pages
constitute a full, true and correct transcript.

Dated this 15th day of April, 2005.

A handwritten signature in cursive script, reading "Julie Hedelson", is written over a horizontal line.

JULIE HEDELSON
Official Court Reporter
Registered Merit Reporter
Certified Realtime Reporter