

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

THE HONORABLE STEPHEN V. WILSON, JUDGE PRESIDING

UNITED STATES OF AMERICA,)

Plaintiff,)

vs.)

SHERMAN MARTIN AUSTIN,)

Defendant.)

Case No. CR 02-884-SW

 **COPY**

REPORTER'S TRANSCRIPT OF PROCEEDINGS

(SENTENCING)

LOS ANGELES, CALIFORNIA

MONDAY, AUGUST 4, 2003

11:00 A.M.

KAREN R. PINN, CSR 5574
Official Court Reporter
United States District Court
312 North Spring Street, Room 410
Los Angeles, California 90012
(213) 626-3646

1 APPEARANCES OF COUNSEL:

2 ON BEHALF OF THE PLAINTIFF, UNITED STATES OF AMERICA:

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4 UNITED STATES DEPARTMENT OF JUSTICE
5 BY: ROD CASTRO-SILVA
6 ASSISTANT UNITED STATES ATTORNEY
312 North Spring Street
Los Angeles, California 90012

7
8 ON BEHALF OF THE DEFENDANT, SHERMAN MARTIN AUSTIN:

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10 FEDERAL PUBLIC DEFENDER'S OFFICE
CENTRAL DISTRICT OF CALIFORNIA
11 BY: RONALD KAYE
DEPUTY FEDERAL PUBLIC DEFENDER
12 321 East Second Street
Los Angeles, California 90012

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1 LOS ANGELES, CALIFORNIA; MONDAY, AUGUST 4, 2003; 11:00 A.M.

2 THE CLERK: Item 9, CR 02-884-SVW, United States of
3 America v. Sherman Martin Austin.

4 Counsel, please state your appearances.

5 MR. CASTRO-SILVA: Good morning, Your Honor. Rod
6 Castro-Silva for the United States.

7 MR. KAYE: Good morning, Your Honor. Ronald Kaye,
8 appearing on behalf of Mr. Sherman Martin Austin who is present
9 before the Court.

10 THE COURT: This is the time for further hearing on
11 the sentencing of the defendant. We recessed, after some
12 extended colloquy, because the Court was surprised at the
13 recommendation by the government and wanted some clarification.

14 It should be understood that the government's
15 recommendation is only a part of the mix that ultimately
16 determines the sentence, but the Court certainly considers what
17 the defendant puts forth, and the defendant has put forth a
18 substantial amount of material in connection with the
19 sentencing. So the Court was seeking some further input from
20 the government.

21 Before we begin even further, can you tell me,
22 Mr. Castro-Silva, what, if anything, has changed, in the
23 government's opinion?

24 MR. CASTRO-SILVA: Your Honor, nothing has changed
25 from the last hearing with respect to the government's opinion

1 and recommendation.

2 THE COURT: Did you follow through as I suggested?

3 MR. CASTRO-SILVA: Yes, Your Honor, I did.

4 THE COURT: All right. Very well. Then you were,
5 Mr. Kaye, presenting your position. I think you had made a
6 substantial presentation, but certainly you have the right to
7 continue on, if you wish, and/or present -- or have Mr. Austin
8 make a presentation on his behalf.

9 MR. KAYE: Your Honor, just briefly. We would ask
10 the Court to sentence Mr. Austin to the recommendation of the
11 parties, which would be the four months in custody and the four
12 months in a halfway house.

13 There is only one other issue with regard to
14 supervision. Would the Court like me to address that now?

15 THE COURT: That was item 7, I believe.

16 MR. KAYE: That's correct, Your Honor.

17 THE COURT: I reviewed that. As a matter of law, it
18 seems to me that the recommendation is within the law as I read
19 the cases. I take it you are not arguing the legality of that
20 recommendation but the necessity?

21 MR. KAYE: That's correct, Your Honor. Your Honor,
22 what we would ask the Court to impose, as a condition of
23 supervised release, that there be a mandatory meet and confer
24 between the probation office and Mr. Austin, and if the
25 probation office should determine that there is a violation of

1 the conditions of supervised release, that he is engaged in
2 interacting with individuals who profess some type of
3 antigovernment and violent agenda.

4 The reason being, Your Honor, I gave you a
5 hypothetical. My experience with Mr. Austin -- and I've been
6 with this case for approximately two years -- is that the group
7 he's involved with essentially feeds the homeless and goes --
8 and goes to protests.

9 There is no -- there has never been anything that has
10 manifested any kind of violence. And if he should be with a
11 group where somebody made some off-the-cuff statement that
12 seems like "Let's take over the government," for instance, just
13 something like that, inherently, that would be a violation of
14 the condition of supervision, and he would be forced to refrain
15 from interacting and associating with that group.

16 So what I would ask the Court to impose is that prior
17 to being brought forth before Your Honor as a revocation
18 proceeding, that Mr. Austin at least have the opportunity to
19 meet with the probation officer, discuss who the individual was
20 or the group is, make a determination; and if we need to have
21 some kind of clarification by the Court, then we would
22 perhaps --

23 THE COURT: Don't you think that would happen as a
24 matter of course? It seems to me that only in situations that
25 involved imminent risk or danger does the probation department

1 seek a bench warrant.

2 Most often, if there is some question, they discuss
3 it with the person on supervised release and try to resolve it.
4 Isn't that your experience?

5 MR. CASTRO-SILVA: Your Honor, that's my experience
6 and my understanding also from the probation officer's response
7 to the defendant's suggested meet and confer in the addendum to
8 the PSR.

9 The probation officer is going to be in continuous
10 contact with Mr. Austin --

11 THE COURT: Yes.

12 MR. CASTRO-SILVA: -- during his period of supervised
13 release. There is, in essence, already a meet and confer. I
14 think to make it mandatory would --

15 THE COURT: I think it's built in. And my experience
16 is that, especially with a condition such as that, the
17 probation officer would certainly investigate; and unless it
18 was crystal clear that there was a violation, confer with the
19 defendant or others to better understand the nature of the
20 organization.

21 MR. KAYE: Very well, Your Honor. Then based on the
22 pleadings, the report of the psychologist, the letters of all
23 of -- of several adults who have known Mr. Austin for 15 years,
24 at minimum, we would submit and we would request the Court to
25 follow the recommendation of the parties.

1 Mr. Austin would like to address the Court.

2 THE COURT: All right. This is his opportunity. Go
3 ahead, Mr. Austin.

4 THE DEFENDANT: Your Honor, basically, when this
5 happened, I wasn't really thinking. A lot has changed since
6 then. It's been about two years. Now I realize that what
7 happened was a lot more serious than I thought about it. As I
8 say, a lot has changed since then. I've matured a lot since
9 then. It happened when I was 18. I'm 20 now.

10 And now I'm just basically, you know, I'm more
11 focused on just getting on with my life. You know, I want to,
12 you know, hopefully pursue a career in music or computer
13 programming, something along that lines. But, basically, I
14 pretty much understand that this was pretty serious, and that I
15 would be devastated if someone used this information to harm
16 others.

17 THE COURT: Very well. Any legal cause why sentence
18 should not now be imposed?

19 MR. KAYE: No, Your Honor.

20 THE COURT: Pursuant to the Sentencing Reform Act of
21 1984, it is the judgment of the Court that the defendant,
22 Sherman Martin Austin, is hereby committed on the single count
23 information to the custody of the Bureau of Prisons for a term
24 of 12 months.

25 Upon release from imprisonment, the defendant shall

1 be placed on supervised release for a term of three years,
2 under the following terms and conditions -- incidentally, is
3 three years the maximum amount of supervised release?

4 MR. CASTRO-SILVA: Your Honor, I'm not sure of the
5 answer to that. Let me check. It is three years, Your Honor.

6 THE COURT: All right.

7 -- under the following terms and conditions: (1) he
8 shall comply with the rules and regulations of the U.S.
9 Probation Office and General Order 318; (2) he shall not
10 possess or access any computer or computer-related device in
11 any manner for any purpose without the prior approval of the
12 probation officer. If the defendant receives prior approval
13 from the probation officer, he shall use only those computers
14 and computer-related devices, screen, user names, passwords,
15 e-mail accounts, and Internet service providers as approved by
16 the probation officer.

17 If the defendant obtains prior approval from the
18 probation officer to access or possess a computer, all such
19 computers, computer-related devices, and peripheral equipment
20 used by the defendant shall be subject to search and seizures,
21 and the installation of search and/or monitoring software
22 and/or hardware, including unannounced seizure, for the purpose
23 of search.

24 The defendant shall not upgrade, reinstall, repair,
25 or modify the hardware or software on the computers,

1 computer-related devices, or their peripheral equipment, nor
2 shall he hide or encrypt files or data without the prior
3 approval of the probation officer.

4 He shall provide all billing records, including
5 telephone, cable, Internet, satellite, and the like, as
6 requested by the probation officer.

7 He shall not knowingly negotiate with any
8 organization or any member thereof which espouses violence or
9 physical force as a means of intimidation or achieving
10 economic, social, or political change.

11 The drug testing condition is suspended based upon
12 the determination that the defendant poses a low risk of future
13 substance abuse.

14 He shall pay a special assessment of a hundred
15 dollars, and he shall pay a fine to the United States in the
16 amount of \$2,000. The fine is payable in monthly installments
17 of a hundred dollars. The payment shall begin 30 days after
18 commencement of supervision.

19 I will allow the defendant to self-surrender. When
20 will he be prepared to do that? I usually give defendants
21 three weeks.

22 MR. KAYE: We ask for 30 days, Your Honor.

23 THE COURT: All right. I'll give him 30 days. He is
24 ordered to self-surrender to the designated facility within 30
25 days from today.

1 What date would that be, Paul?

2 THE CLERK: That would be September 3rd.

3 THE COURT: If one isn't designated by that date, he
4 is to self-surrender to the United States Marshal in this
5 building.

6 MR. KAYE: Your Honor, we ask for a recommendation
7 within the Los Angeles region so he can keep in contact with
8 his mother in particular.

9 THE COURT: I'll make a recommendation for Southern
10 California. I don't know if there is a facility in this region
11 except for Terminal Island.

12 Are there any counts to be dismissed?

13 MR. CASTRO-SILVA: No, Your Honor.

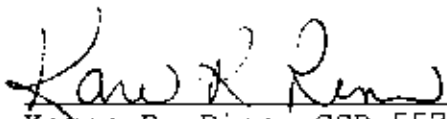
14 THE COURT: All right.

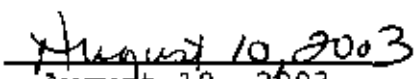
15 Bond is exonerated upon surrender.

16 MR. KAYE: Thank you.

17 (Proceedings concluded.)

18
19 I certify that the foregoing is a true and correct
20 transcript from the stenographic record of
21 proceedings in the foregoing matter.

22
23 
24 Karen R. Pinn, CSR 5574
25 Official Reporter


August 10, 2003