

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK**

DISTRICT COURT
N.D. OF N.Y.

CRIMINAL SENTENCING MINUTES

DATE: **AUGUST 20, 2008**

LOCATION: Albany, New York

TIME: START: 10:¹⁰00 A.M. / END: 10:35 A.M.

PRESIDING: **HON. LAWRENCE E. KAHN**

CLERK: Scott A. Snyder / Suzanne Gunter

COURT REPORTER: Theresa Casal / Bonnie Buckley / _____

LAWRENCE K. BALRMAN, CLERK
ALBANY

UNITED STATES OF AMERICA

VS.

1:06-CR-453 (LEK)

BERNE A. WATKINS



APPEARANCES:

THOMAS A. CAPEZZA, AUSA.	For the Government
DONALD T. KINSELLA, ESQ.	For the Defendant
<i>Edward Cox</i>	Probation / Pretrial Officer
NONE	Interpreter

Gregory Houtou - special agent

✓	Judge inquires regarding review of presentence report and objections.
✓	Attorney is heard on behalf of defendant. <i>request a non-guideline sentence. & has health issues</i>
✓	Defendant speaks on own behalf. <i>Request a non custodial sentence.</i>
✓	AUSA <u>CAPEZZA</u> speaks on behalf of government.
✓	The Court adopts the factual information and the guideline applications contained in the Presentence Investigation Report or see below

The Court adopts the factual findings and guideline application in the presentence report **except** (see attachment if necessary):

GUIDELINE RANGE DETERMINED BY THE COURT

Total Offense Level: total: 21 The Court departs from
 Criminal History Category: I the advisory guidelines: 3553 a

Imprisonment Range: 37 to 46 MONTHS

Mandatory Minimum: _____ or Maximum: ^{count} 24 months

PURSUANT TO THE ADVISORY GUIDELINES SET BY THE SENTENCING REFORM ACT OF 1987, IT IS THE JUDGMENT OF THIS COURT:

<input checked="" type="checkbox"/>	The defendant is sentenced on Count(s): <u>4 + 5</u>
<input checked="" type="checkbox"/>	Defendant is committed to the custody of the Bureau of Prisons to be imprisoned for a term of <u>9</u> months. <u>concurrent on both.</u>
<input checked="" type="checkbox"/>	Sentence is to run <u>concurrently</u> consecutively to <u>4 + 5.</u>
	It is recommended to the BOP that the defendant participate in the Comprehensive Residential Drug Treatment Program.
	Upon release from imprisonment, you shall submit to a substance abuse evaluation and complete treatment as directed by the probation officer.
	Defendant is placed on probation for a period of: _____ months/years.
	Defendant is placed on supervised release for a period of: _____ months/years.
<input checked="" type="checkbox"/>	Upon defendant's release from imprisonment, defendant shall be placed on supervised release for a term of <u>3</u> (years/months on count(s) <u>4 to 5</u> to run <u>concurrently/consecutively</u> .
	While in custody, the Court orders you to submit to a sex offender evaluation if made available by the Bureau of Prisons. If you are determined to be in need of treatment, you shall attend and participate in sex offender treatment. If you violate this order, the Court will address this at the time of your release from imprisonment.
	The Court recommends you participate in the Bureau of Prisons Sex Offender Treatment Program .

X	While on supervised release / probation, defendant shall not commit another federal, state or local crime and shall comply with the standard conditions that have been adopted by this court.
X	As called for in the Violent Crime Control & Law Enforcement Act of 1994, defendant shall refrain from any unlawful use of a controlled substance and submit to (1) drug test w/in (15) days of release of imprisonment and at least (2) periodic drug tests, thereafter, as directed by the Probation Office.
X	Defendant is not to own or possess any firearms or other dangerous weapons.

SPECIAL CONDITIONS WHILE UNDER SUPERVISION / PROBATION

	If deported , defendant is not to enter or attempt to enter the United States without prior written permission of the Secretary of the Department of Homeland Security. If the defendant re-enters the United States , the defendant shall report to the probation office in the Northern District of New York within 72 hours.
	The defendant shall report, maintain contact and cooperate with the U.S. Department of Homeland Security / Immigration & Naturalization Service and the defendant shall fulfill any requirements of U.S. Immigration Law.
	The defendant shall submit to a substance abuse evaluation , urinalysis and complete treatment as directed by the Probation Officer.
	The Defendant shall submit to drug / alcohol testing as directed by the Probation dept.
✓	The above drug testing conditions is suspended based on the Court's determination that the defendant poses a low risk of future substance abuse.
	The Defendant shall refrain from alcohol use for the term of Probation / Supervision.
	As directed by the Probation Office, defendant shall be evaluated by a mental health agency and follow all recommendations, including any recommendations for inpatient treatment, until satisfactory completion.
	Defendant shall participate in a program of financial and credit counseling . The program shall be approved by the United States Probation Office.
✓	Defendant shall provide the Probation Office with any requested financial information .
✓	Defendant shall not incur any new charges and/or open any new lines of credit without the approval of the probation officer.
✓	Defendant shall contribute to the cost of services rendered (co-pay) in an amount to be determined by the Probation Officer based on ability to pay or availability or third party payments.
✓	Defendant shall perform <u>200</u> HOURS of COMMUNITY SERVICE as directed by the probation officer.

✓	Defendant is placed on HOME DETENTION for a period of <u>6 months</u> commencing on a date and under conditions as set by the Chief U.S. Probation Officer and with the approval of the Court. If placed on electronic monitoring, defendant shall pay all costs associated with program as directed by the Probation Office.
	You Shall notify third parties of risks that may be occasioned by your criminal record or personal history or characteristics, and shall permit the probation officer to make such notifications and to confirm your compliance with such notification requirement.
	You shall cooperate in the collection of DNA as directed by the probation officer.
	You shall not possess or use a computer with access to any on-line computer service, at any location, except at your place of employment, without the prior written permission of the probation officer & / or unless you participate in the Computer Restriction and Monitoring Program . If your employment requires the use of a computer, you may use a computer if the employment is approved by your probation officer provided you notify your employer of; 1) the nature of your conviction; and 2) the fact that your conviction was facilitated by the use of the computer.
	You shall permit the United States Probation Office to conduct periodic, unannounced examinations of any computer equipment you use or possess, limited to all hardware and software related to online use (e.g., use of the World Wide Web, e-mail, instant messaging, etc.) and the viewing of pictures or movies that may violate your conditions of supervised release, except at your place of employment. These examinations may include retrieval and copying of data related to online use, the viewing of pictures and movies, and potential violations of the terms and conditions of supervised release from this computer equipment and any internal or external peripherals. This computer equipment may be removed to the Probation Office for a more thorough examination. The Probation Office may install any hardware or software system that is needed to monitor your computer use, subject to the limitations described above.
	In the event your treatment provider determines that the use of a computer or internet service is contraindicated to your course of recovery, the Court, upon considering such information, may prohibit the use of a computer if the Court is convinced that such is the case based upon the evidence.
	You shall not have any direct or indirect contact with the victim or his / her family who are identified in the presentence report and known to the Court.
	You shall answer the questions posed during the polygraph examination , subject to your right to challenge in a court of law the use of such statements as violations of your Fifth Amendment rights (the results of any polygraph examinations shall be disclosed to the US Probation Officer and the Court, but shall not be further disclosed without an order of the Court).
	You shall register with the state sex offender registry agency in any state where you reside, are employed, carry on a vocation or are a student, as directed by the probation officer.
	You shall not have any direct or indirect contact with a person under the age of 18 unless it is supervised by a person approved by the probation officer.
	You shall not be in any area in which persons under the age of 18 are likely to congregate , such as school grounds, child care centers, or playgrounds, without the permission of the probation officer.
	You shall submit your person , and any property, house, residence, vehicle, papers, computer, other electronic communications or data storage devices or media, and effects to search at any time, with or without a warrant, by any federal probation officer, or any other law enforcement officer from whom the Probation Office has requested assistance, with reasonable suspicion concerning a violation of a condition of probation or supervised release or unlawful conduct by you. Any items seized may be removed to the Probation Office or to the office of their designee for a more thorough examination.

FINE / COST OF INCARCERATION

✓	A special assessment of \$ <u>100.</u> (on each count) is imposed, payable to the Clerk of the Court, which is due immediately. Total special assessment is \$ <u>200. -</u> .
	Pursuant to the plea agreement, you shall forfeit to the United States all right, title and interest property as detailed in the Forfeiture Order.
✓	The defendant shall make restitution in the total amount of \$ <u>792,685.⁴¹</u> which shall be made payable to: Clerk, U.S. District Court, Federal Building 100 S. Clinton St., PO Box 7367, Syracuse, NY 13261-7367. The defendant shall make restitution payments at a minimum rate of 10% ^{10%} of <u>his</u> her gross monthly income while incarcerated and at a minimum rate of \$100.00 ^{\$100.00} per month, or 10% of <u>his</u> her gross monthly income, whichever is <u>greater</u> , following <u>his</u> her release from imprisonment. However, should the defendant have the ability to pay restitution in full, during the pendency of the restitution order, the defendant must do so.
✓	The interest requirement is waived pursuant to 18 U.S.C. § 3612(f).
	Defendant is to pay cost of incarceration _____.
✓	After considering defendant's present financial condition and the sentence just imposed, the Court does not impose any fine or costs of incarceration or supervised release or probation supervision, except electronic monitoring, if used.
	Defendant is to pay a fine in the amount of: \$ _____ .

PLACEMENT, APPEALS AND MISCELLANEOUS

	Defendant is remanded to the custody of the U.S. Marshal.
✓	Defendant is to surrender to the custody of the Bureau of Prisons by reporting to the institution designated on <u>10/28/08</u> at <u>2:00 P.M.</u> Defendant is to contact the United States Marshal of this District who will advise of the institution designated. If the B.O.P. has not yet completed the institution designation, the defendant shall then surrender to the U.S. Marshal of this district.
✓	Remaining Counts to the Indictment ¹⁻³ Information are dismissed on motion of AUSA.
✓	Parties advised of their appeal rights.
✓	Court will recommend to BOP: <u>Placement near family.</u>

✓	Other: <u>The defendant shall receive credit for any</u> <u>restitution payments already made & any restitution</u> <u>payments made by Mr. Watkins shall be credited toward the</u> <u>restitution obligation of related case Aaron Dare, DNYN</u> <u>106CR000429-001</u>
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**** A COPY OF THE MINUTES ARE TO BE FORWARDED TO THE CHIEF PROBATION OFFICER OF THIS DISTRICT.**

AUGUST 20 2008



Hon. Lawrence E. Kahn, U.S.D.J.