

ISSUE \_\_\_\_\_ :

INEFFECTIVE ASSISTANCE OF COUNSEL AND/OR COURT ERROR OCCURRED WHEN MOVANT JOHN GREGORY LAMBROS RECEIVED A MORE SEVERE SENTENCE THEN HIS CO-CONSPIRATORS WHEN HE EXERCISED HIS RIGHT TO STAND TRIAL. LAMBROS' CONSTITUTIONAL RIGHTS WHERE INFRINGED AND LAMBROS WAS PREJUDICED.

Movant Lambros' constitutional rights where violated and he was prejudiced, because Movant exercised his rights to stand trial. Disparity existed between the sentences Movant Lambros received, mandatory life without parole that was reduced to thirty (30) years, and those of Movant's co-conspirators which did not exceed fifty (50) months. Movant Lambros was punished for exercising his right to stand trial. The sentencing judges did not offer an explanation during the sentencing proceedings as to the substantial disparity in sentences imposed upon different individuals for engaging in the same and/or more severe criminal activity. See, U.S. vs. CAPRIOLA, 537 F.2d 319, 320-321 (9th Cir. 1976); U.S. vs. BISCHEL, 61 F.3d 1429, 1437 (9th Cir. 1995).

**FACTS:**

1. USA vs. LAWRENCE PEBBLES, Docket No. CR-4-89-82, U.S. District Court for the District of Minnesota listed the following defendants receiving convictions and sentences of:
  - a. LAWRENCE RANDALL PEBBLES received a 50 month prison sentence on June 5, 1992, after pleading guilty to conspiracy to distribute cocaine;
  - b. RALPH AMERO charges were dismissed in July 1989;
  - c. IRA BERINE charges were dismissed from indictment and he pled guilty to a one-count information charging use of a communication facility while committing a drug offense on May 17, 1991. He was sentence to 14 month prison sentence.

d. PAMELA RAY LEMON charges were dismissed from indictment and she pled guilty to a superseding indictment charging conspiracy to defraud the Internal Revenue Service. LEMON was sentenced to two (2) months in prison on December 8, 1989.

e. JOHN GREGORY LAMBROS went to TRIAL. Lambros was charged and found guilty in Counts 1, 5, 6, and 8. Lambros was sentenced to the following prison sentences:

1. COUNT I: Mandatory Life Sentence without parole that was vacated by the Eighth Circuit on September 8, 1995. See, U.S. vs. LAMBROS, 65 F.3d 698 (8th Cir. 1995)(Lambros was not subject to statute's mandatory life sentence for conspiracy to distribute cocaine). Lambros was resentenced on February 10, 1997, on Count One (1) to thirty (30) years;

2. COUNT V: Ten (10) year sentence;

3. COUNT VI: Ten (10) year sentence;

4. COUNT VIII: Thirty (30) year sentence.

See, JOHN GREGORY LAMBROS' "Presentence Investigation Report" dated February 24, 1993, Paragraphs 2, 3, 4 and 6 as to sentences received by above listed Codefendants.

**EXHIBIT \_\_\_\_\_**: (Pages F.1, 1, and 2)

2. Movant Lambros was found guilty of purchasing six (6) kilograms of cocaine in total within Counts 5, 6, and 8 from LAWRENCE RANDALL PEBBLES during the Count I conspiracy.

3. PAMELA RAY LEMON was indicted for purchasing four (4) kilograms of cocaine in total within Counts 5 and 6 from LAWRENCE RANDALL PEBBLES during the Count I conspiracy.

4. LAWRENCE RANDALL PEBBLES the organizer of the conspiracy who turned government informant and testified against all codefendants in this conspiracy, stated that he served a federal prison sentence for distributing drugs before he

organized the conspiracy in Count I of this action which charges a conspiracy from on or about January 1, 1983, to February 27, 1988. The indictment states Lambros entered the conspiracy on or about July 8, 1987 within Count 5. The district court and the government plainly stated during the trial of Movant Lambros that LAWRENCE RANDALL PEBBLES was the "MOST CULPABLE INDIVIDUAL" within the conspiracy, as he distributed cocaine and marijuana within several states in the United States and Provinces of Canada. It is the governments estimate that LAWRENCE RANDALL PEBBLES distributed OVER TWO-HUNDRED (200) KILOGRAMS OF COCAINE from 1983 thru February 1988.

5. FEDERAL SENTENCING GUIDELINES: U.S.S.G. § 1B1.3(a), Title 18 U.S.C.A., The relevant conduct sentencing guideline provision directs a sentencing court to sentence a defendant for uncharged conduct germane to the charge-offense by authorizing it to consider events before, during, and after the offense conduct. See, U.S. vs. JONES, 313 F.3d 1019, 1022-1023 (7th Cir. 2002). Also see, U.S. vs. PUGH, 25 F.3d 669, 676-677 (8th Cir. 1994) ("...he also was convicted of **ONE COUNT OF CONSPIRACY**, an offense that necessarily includes quantities other than the 2.91 grams attributable to the four distribution counts." Therefore, the district court must consider conduct for which he is convicted **AND** his other **RELEVANT CONDUCT**, See U.S.S.G. § 1B1.3(a)(1)). LAWRENCE RANDALL PEBBLES received a 50 month sentence in prison on June 5, 1992, after pleading guilty to CONSPIRACY to distribute cocaine.

6. Movant LAMBROS and codefendant PEBBLES both had at least one or more prior convictions and where required to be sentenced under Title 21 U.S.C. **§ 841(b)(1)(A)** involving over five (5) kilograms of cocaine which requires a sentence not less than 20 years and not more than life imprisonment.

7. DRUG QUANTITY TABLE: U.S.S.G. § 2D1.1, Title 18 U.S.C.A.. The following BASE OFFENSE LEVELS apply to Movant Lambros and LAWRENCE PEBBLES:

a. LAWRENCE PEBBLES was responsible for over 50 Kilograms of cocaine, thus a base offense level of **36**;

b. Movant Lambros was allegedly responsible for 6 kilograms of cocaine, thus a base offense level of **32**.

**LAW:**

8. U.S. vs. CAPRIOLA, 537 F.2d 319, 320-321 (9th Cir.) (Rehearing and Rehearing En Banc Denied 1976) (If more severe sentence is imposed on defendant because he has exercised his right to stand trial, his constitutional rights have been infringed) (Sentencing judge must record explanation why there is a substantial disparity in sentences imposed upon different individuals for engaging in the same criminal activity. Id. at 321); U.S. vs. MONROE, 943 F.2d 1007, 1017-1018 (9th Cir. 1991) ("We have since limited CAPRIOLA to situations in which the defendant's constitutional right to stand trial is implicated. Id. at 1018); U.S. vs. BOSHELL, 952 F.2d 1101, 1107-1109 (9th Cir. 1991) (case remanded for a statement explaining how much, if any, departure is justified based on the desire to equalize the co-defendant's sentences. This is a cocaine conspiracy that straddled the November 1, 1987 effective date of the Sentencing Guidelines); U.S. vs. BISCHEL, 61 F.3d 1429, 1437 (9th Cir. 1995). Also see, U.S. vs. THOMPSON, 51 F.3d 122, 126-27 (**8th Cir.** 1995).

**CONCLUSION:**

9. Movant Lambros was prejudiced when he exercised his CONSTITUTIONAL RIGHT TO STAND TRIAL, as Movant Lambros received a longer sentence than the organizer of the conspiracy who was labeled the most culpable individual by the government.

10. Movant Lambros is requesting this court to vacate all counts and remand for resentencing so the court may offer an explanation why there is a substantial disparity in sentences imposed upon co-defendants for engaging in the same and/or more severe criminal activity.

IN UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MINNESOTA

UNITED STATES OF AMERICA

v.

Docket No. CR 4-89-82  
Defendant No. (05)

JOHN GREGORY LAMBROS

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PRESENTENCE INVESTIGATION

Prepared For:

The Honorable Diana E. Murphy  
Chief U. S. District Judge

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Plea/Verdict:

On January 15, 1993, a jury returned guilty verdicts on Counts 1, 2, 3, and 4.

Offense:

Count 1: Conspiracy to Distribute in Excess of Five Kilograms of Cocaine, in violation of 21 U.S.C. §§ 841(a) and 846; a Class A felony.

Count 2: Possession With Intent to Distribute Approximately Two Kilograms of Cocaine in violation of 21 U.S.C. § 841; a Class B felony.

Count 3: Possession With Intent to Distribute Approximately Two Kilograms of Cocaine in violation of 21 U.S.C. § 841; a Class B felony.

Count 4: Possession With Intent to Distribute Approximately Two Kilograms of Cocaine in violation of 21 U.S.C. § 841; a Class B felony.

Statutory Penalty:

Count 1: Mandatory life imprisonment, up to \$8,000,000 fine, and a \$50 special assessment.

PART A. THE OFFENSE

Charges and Convictions

1. On May 17, 1989, a 9-count Indictment was filed in the District of Minnesota charging the defendants, Lawrence Randall Pebbles, Ralph Amero, Ira Jay Berine, George Frederick Angelo, John Gregory Lambros, and Pamela Ray Lemon, with the following:

Count 1 charged that on or about January 1, 1983, to February 27, 1988, Lawrence Randall Pebbles, Ralph Amero, Ira Jay Berine, George Frederick Angelo, John Gregory Lambros, and Pamela Ray Lemon with Conspiracy to Distribute in Excess of Five (5) Kilograms of Cocaine, in violation of 21 U.S.C. §§ 846 and 841(a)(1).

Count 2 charged that on March 4, 1987, Ralph Amero Travelled from Massachusetts to Minnesota With the Intent to Carry on in an Unlawful Activity, Namely the Distribution of Cocaine, in violation of 18 U.S.C. §§ 1952(a)(3) and 1952(b)(1).

Count 3 charged that on October 4, 1987, Ralph Amero Possessed With Intent to Distribute Approximately Eight (8) Ounces of Cocaine, in violation of 21 U.S.C. § 841(a)(1).

Count 4 charged that on March 4, 1987, George Frederick Angelo Possessed With Intent to Distribute Approximately One (1) Kilogram of Cocaine, in violation of 21 U.S.C. § 841(a)(1).

Count 5 charged that on July 8, 1987, John Gregory Lambros and Pamela Ray Lemon Aided and Abetted Each Other in the Possession With the Intent to Distribute Approximately Two (2) Kilograms of Cocaine, in violation of 21 U.S.C. §§ 841(a)(1) and 2.

Count 6 charged that on October 23, 1987, John Gregory Lambros and Pamela Ray Lemon Aided and Abetted Each Other in the Possession With the Intent to Distribute Approximately Two (2) Kilograms of Cocaine, in violation of 21 U.S.C. §§ 841(a)(1) and 2.

Count 7 charged that on December 22, 1987, Ira Jay Berine Travelled in Interstate Commerce

from Minnesota to Iowa With the Intent to Carry on in an Unlawful Activity, that is the Distribution of Cocaine, in violation of 18 U.S.C. §§ 1952(a)(3) and 1952(b)(1).

Count 8 charged that on December 22, 1987, George Frederick Angelo and **John Gregory Lambros** Aided and Abetted Each Other in the Possession With the Intent to Distribute Approximately Two (2) Kilograms of Cocaine, in violation of 21 U.S.C. §§ 841(a)(1) and 2.

*not possible  
at 2/25/93 call memo*

Count 9 charged that on February 12, 1988, **John Gregory Lambros** Travelled in Interstate Commerce from Minnesota to California With the Intent to Carry on in an Unlawful Activity, that is the Distribution of Cocaine, in violation of 18 U.S.C. §§ 1952(a)(3) and 1952(b)(1).

2. On June 5, 1992, Lawrence Randall Pebbles received a 50-month prison sentence in U. S. District Court after he pled guilty to Conspiracy to Distribute Cocaine. This sentence was ordered to run consecutively to a 36-month prison sentence he received on May 11, 1989, for a conviction of Filing False Tax Returns.
3. Charges against Ralph Amero were dismissed in July 1989.
4. Ira Berine pled guilty to a one-count Information charging Use of a Communication Facility While Committing a Drug Offense on May 17, 1991. He was sentenced to 14 months imprisonment.
5. George Frederick Angelo is a fugitive.
6. On December 8, 1989, Pamela Lemon was sentenced to two months imprisonment after she earlier pled guilty to a Superseding Indictment charging Conspiracy to Defraud the Internal Revenue Service.
7. **John Gregory Lambros** went to trial. The counts in which he was named (Counts 1, 5, 6, and 8) were renumbered as Counts 1, 2, 3, and 4. On January 15, 1993, a jury returned guilty verdicts on all four counts. Count 9 was dismissed by the Government.
8. Since the conspiracy extended past November 1, 1987, the Sentencing Reform Act of 1984 is applicable to Counts 1 and 4.

Related Cases

9. None.

*7.*