

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

Case No. 10-20361-CR-MIDDLEBROOKS

UNITED STATES OF AMERICA,)

Plaintiff,)

-v-)

KRISTOPHER HENRIQSON,)

Defendant.)

Miami, Florida

October 19, 2010

11:00 a.m.

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TRANSCRIPT OF SENTENCING PROCEEDINGS

BEFORE THE HONORABLE DONALD M. MIDDLEBROOKS

U.S. DISTRICT JUDGE

Appearances:

For the Government:

JARED M. STRAUSS

Assistant United States Attorney

99 NE 4th Street

Miami, Florida 33132

For the Defendant:

MICHAEL SPIVAK

Assistant Federal Public Defender

150 West Flagler Street

Miami, Florida 33130

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Official Court Reporter

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STENOGRAPHICALLY RECORDED COMPUTER-AIDED TRANSCRIPT

1 (Call to Order of the Court.)

2 THE COURT: Good morning. Please be seated.

3 MR. SPIVAK: Good morning, your Honor. Michael
4 Spivak, Assistant Federal Public Defender.

5 Mr. Henriqson is not outside. I know I talked to him
6 so I know he's supposed to be here and he knows where to go and
7 my secretary told me she talked to him this morning. So he
8 knows he is supposed to be here at 11 o'clock, and he is
9 supposed to in building on this floor, and I can't explain why
10 he is not here. I don't know what the Court normally does. If
11 you want to --

12 THE COURT: Well, why don't we wait a couple of
13 minutes.

14 MR. SPIVAK: Yes, sir.

15 THE COURT: See if perhaps he is late.

16 MR. SPIVAK: Yes, sir.

17 (Pause in Proceedings.)

18 THE COURT: Okay. This is the case of the United
19 States versus Kristopher Henriqson, Case No. 10-20361.

20 Let's start with appearance.

21 MR. STRAUSS: Good morning, your Honor. Jared Strauss
22 for the United States.

23 THE COURT: Good morning.

24 MR. SPIVAK: Good morning, your Honor. Michael
25 Spivak, Assistant Federal Public Defender, on behalf of

1 Mr. Henriqson who is present before the Court, Judge, for his
2 sentencing.

3 THE COURT: Good morning. Please go ahead and have A
4 seat.

5 Okay. First, I have a report and recommendation from
6 the magistrate for the change of plea. Is there any issue as
7 to that?

8 MR. STRAUSS: No, your Honor.

9 MR. SPIVAK: No, your Honor.

10 THE COURT: All right. Then I will adopt the report
11 and recommendation and adjudge the defendant guilty of the
12 crime charged.

13 I've also reviewed the presentence investigation
14 report. I note there is no plea agreement.

15 Are there any other filings? There are apparently no
16 objections; is that right?

17 MR. STRAUSS: There are no objections from the
18 Government, your Honor.

19 THE COURT: All right. The advisory guideline is zero
20 to six months, plus there's a mandatory 24-month consecutive
21 sentence. Let me hear your recommendations.

22 MR. STRAUSS: Your Honor, the Government recommends a
23 low-end sentence, and that would be one day on Count 1 and
24 followed by a consecutive two years on Count 3, for a total
25 sentence of two years and one day, followed by whatever term of

1 supervised release your Honor feels is appropriate.

2 THE COURT: Okay. Probation suggested perhaps time
3 served. Does that work for the one day? Was he arrested?

4 MR. STRAUSS: I don't believe he served any federal
5 time on the underlying, but if I'm mistaken on that, perhaps
6 they can correct me on that. I believe he was initially
7 arrested by the state, but let me --

8 THE COURT: Okay. Mr. Spivak, anything that you want
9 to add to that? You think the one day is the right thing to
10 do?

11 MR. SPIVAK: Yes, Judge. I think that is the right
12 thing. And I appreciate --

13 (Defendant and counsel conferring sotto voce.)

14 MR. SPIVAK: I'm sorry, Judge. Just one thing. There
15 was actually a plea agreement in the case. I'm sorry. There
16 was one filed, but --

17 THE COURT: You're correct. I apologize.

18 MR. SPIVAK: What your Honor is thinking of doing, the
19 credit time served as to Count 1 followed by two years, is in
20 line with the plea agreement. My client wanted me to ask the
21 Court, and I don't know if the Court is amenable to this or
22 not, for house arrest as opposed to the two years in.

23 THE COURT: No, I don't think the house arrest would
24 be appropriate.

25 There's also a forfeiture of a number of items. Is

1 there any issue as to any of that?

2 MR. SPIVAK: No, your Honor. And for the record,
3 Judge, we had no -- we have no objection to the presentence
4 report. The only thing I wanted to mention was the plea.

5 THE COURT: All right. And you're correct. I had
6 reviewed that. I was mistaken. I was thinking of something
7 else.

8 Mr. Henriqson, is there anything that you would like
9 to say before I pronounce sentence? You're not required to
10 speak, but I want to make sure you have the opportunity if you
11 would like.

12 THE DEFENDANT: No, your Honor. I just understand
13 that what I did was wrong and if there's anyway that I could
14 get away from being away from my kids and maybe some probation
15 or house arrest, that would be great.

16 THE COURT: I've considered the statements of all
17 parties, the presentence report which contains the advisory
18 guidelines and the statutory factors. It's the finding of
19 Court that the defendant is not able to pay a fine as well as
20 restitution.

21 It's the judgment of the Court that the defendant,
22 Kristopher Henriqson, is committed to the Bureau of Prisons for
23 a term of one day as to Count 1 and 24 months as to Count 3 to
24 be served consecutively to Count 1.

25 It's further ordered the defendant shall pay

1 restitution in the amount of \$2,819.44 joint and several with
2 codefendant Grant Morse.

3 During the period of incarceration payment should be
4 made as follows: If he earns wages in a federal prison
5 industry's job, then he must pay 50 percent of wages earned.
6 If he doesn't work in such a job, he must pay \$25 per quarter.

7 Upon release from incarceration the defendant shall
8 pay restitution at the rate of 10 percent of monthly gross
9 earnings until such time as that schedule may be altered in the
10 interest of justice.

11 And the Bureau of Prisons, the Probation Office, and
12 US Attorney's Office shall monitor payment of restitution and
13 report any material change in ability to pay.

14 These payments don't preclude Government from using
15 any unexpected financial gains, assets, or income of the
16 defendant to satisfy restitution. Restitution shall be paid to
17 the Clerk of the United States Court who will forward it to the
18 victims.

19 Upon release from imprisonment the defendant shall be
20 placed on supervised release for a term of three years. This
21 term consists of three years as to Count 1, one year as to
22 Count 3. All such terms to run concurrently.

23 Within 72 hours of release the defendant shall report
24 in person to the probation office in the district to which he
25 is released.

1 While on supervised release the defendant shall not
2 commit any crimes, shall be prohibited from possessing a
3 firearm or other dangerous device, and shall not possess a
4 controlled substance.

5 In addition, the defendant shall cooperate in the
6 collection of DNA and comply with the standard conditions of
7 supervised release including the following special conditions:

8 Substance abuse treatment, the financial disclosure
9 requirement, no new debt restriction, the self-employment
10 restriction, and credit card restriction all as noted in Part G
11 of the presentence report.

12 The defendant shall also pay to the United States a
13 special assessment of \$100 as to each of Counts 1 and 3, a
14 total of \$200.

15 The total sentence is one day imprisonment plus 24
16 months' consecutive imprisonment, \$2,819.44 in restitution,
17 three years' supervised release, and a \$200 special assessment.

18 Forfeiture of the defendant's right, title, and
19 interest in certain property is hereby ordered consistent with
20 the plea agreement.

21 Now that sentence has been imposed, does the defendant
22 or his counsel object to the Court's findings of fact or the
23 manner in which sentence was pronounced?

24 MR. SPIVAK: No, your Honor.

25 THE COURT: Mr. Henriqson, you have a right to appeal

1 the sentence imposed. Any notice of appeal must be filed
2 within 14 days. Failure to file a notice within that period
3 would constitute a waiver of your right to appeal.

4 Do you want me to make any recommendations?

5 MR. SPIVAK: Please, your Honor. Would you please
6 recommend that he be housed at Coleman if they have a bed space
7 available.

8 THE COURT: All right. I stay away from a specific
9 institution, but Central Florida?

10 MR. SPIVAK: Yes, please.

11 THE COURT: All right. I'll recommend Central Florida
12 so he can be close to family.

13 MR. SPIVAK: Thank you, your Honor.

14 THE COURT: What's your position on voluntary
15 surrender?

16 MR. STRAUSS: Your Honor, my understanding was that he
17 would surrender today, but we wouldn't oppose a short time for
18 self-surrender.

19 THE COURT: What do you want to do? Do you want to
20 surrender today? What's his position?

21 THE DEFENDANT: If I could have some time, that would
22 be great.

23 THE COURT: You request some time?

24 MR. SPIVAK: Yes, Judge. Yes, your Honor.

25 THE COURT: Do you want to wait -- it usually takes

1 little awhile to designate. Do you want to wait until then or
2 sooner than that?

3 MR. SPIVAK: That would be great, Judge. If we can
4 wait to find out where he is designated and then he can turn
5 himself in that facility, that would be fantastic.

6 THE COURT: All right. Can you give me a date,
7 Angela?

8 THE COURTROOM DEPUTY: It would be by 2 o'clock on
9 Monday, December 27th.

10 THE COURT: December 27th. Is that what you said?

11 THE COURTROOM DEPUTY: Yes.

12 THE COURT: Is that acceptable? 2 o'clock,
13 December 27th.

14 MR. SPIVAK: Yes, your Honor.

15 THE COURT: All right. To the designated institution.
16 If no institution has been designated, to the US Marshals.

17 MR. SPIVAK: Yes, your Honor.

18 THE COURT: All right. Anything else today?

19 MR. SPIVAK: No, your Honor. Thank you very much.

20 MR. STRAUSS: We would move to dismiss the remaining
21 counts. That's Counts 2, 4, 5 and 6 as to this defendant.

22 THE COURT: The remaining counts are dismissed.

23 MR. SPIVAK: Thank you, Judge.

24 THE COURT: Okay. Good luck to you, sir.

25 MR. STRAUSS: Thank you, your Honor.

1 THE DEFENDANT: Thank you, your Honor.

2 (Proceedings concluded at 11:17 a.m.)

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5 C E R T I F I C A T E

6 I, Karl Shires, Registered Professional Reporter and
7 Federal Certified Realtime Reporter, certify that the foregoing
8 is a correct transcript from the record of proceedings in the
9 above-entitled matter.

10 Dated this 21st day of June, 2011.

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Karl Shires, RPR FCRR
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