

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION**

UNITED STATES OF AMERICA

VS.

NO. 02 CR 1050

JOSEPH VENEZIA

SENTENCING MEMORANDUM AND OBJECTIONS TO PSI

DEFENDANT, JOSEPH VENEZIA, through his attorney, KEVIN P. BOLGER, respectfully sets forth his Sentencing Memorandum and Objections to the Presentence Investigation Report(PSI).

On June 15, 2007, Joseph Venezia, age 65, plead guilty to counts 2 and 8 of the instant indictment. Count 2 charges an illegal gambling business and Count 8 conspiracy to defraud the Internal Revenue Service.

As the Court well knows, this involved his employment at M&M Amusement Inc., a company owned and operated by Mickey Marcello. Joe was a route man who, among his other duties, collected the proceeds from the video poker machines. For this he was paid a salary of \$2,400.00 per month. His tenure was from 1996 until his arrest.

OBJECTIONS TO THE PSI

Mr. Venezia takes objection to the investigating agent's conclusion that he was an "associate" of the Chicago Outfit. There is nothing other than his name ending in a vowel that distinguishes from the Johnson brothers or any other salaried employee. It is an unfounded conclusion. The case agent's have also told the probation department that Venezia has not provided them with any information regarding the instant offense. He is not under any obligation to speak to the agents. He has entered a plea of guilty to the offenses outlined above and has accepted responsibility for his actions. His cooperation was neither requested nor needed in this matter.

Mr. Venezia respectfully disagrees with the Guideline calculations of the Probation Department and the United States.

ROLE IN THE OFFENSE

It is the position of Mr. Venezia that he should receive a reduction of 2 points for his minor role in the offense. He was an employee that performed albeit, an illegal activity, at the request of his employer, Mickey Marcello. He was a mere pawn and not allowed to have any input in the activity.

ADJUSTMENT FOR TAX LOSS

It is the position of the defense that the tax loss exceeded \$400,000.00 but not more than \$1,000,000.00. The calculations are estimates and amounts to imputed knowledge of what defendant Marcello was doing with the proceeds of the gambling operation. It assumes that this was done every week, at every collection, for a period of years from 1996 to 2003. There is no proof of this. Even the conservative estimate by the Government amounts to nothing more than speculation. Mr. Venezia should not receive an enhancement based on such a speculative position.

ENHANCEMENT FOR FAILURE TO REPORT INCOME

The two point enhancement for failure to report income exceeding \$10,000.00 in any year from criminal activity does not apply to Mr. Venezia. Any income from this conduct was attributable to M&M Amusement and Mickey Marcello. Mr. Venezia took no part in the sharing of any profits from any illegal gains. He was a salaried employee following orders and nothing more. His income did not depend on nor was it from the skim.

VENEZIA'S GUIDELINE CALCULATIONS

BASE LEVEL OFFENSE	12
TAX TABLE	8
ADJUSTED OFFENSE LEVEL	20
ACCEPTANCE OF RESPONSIBILITY	
3E1.1a	-2
3E1.1b	-1
ROLE IN THE OFFENSE-MINOR	-2
TOTAL OFFENSE LEVEL	15
CATEGORY ONE LEVEL 15	18 TO 24 MONTHS

REQUEST TO DEPART FROM THE GUIDELINES

Mr. Venezia requests that this Court depart from the suggested Guidelines Sentence and sentence him to a period of probation. Under *Gall v. United States*, 552 U.S. ___ (2007) and its predecessors, the Guidelines are no longer mandatory but advisory. A District court judge must consider the extent of any departure from the Guidelines and must explain the appropriateness of the unusually lenient or harsh sentence with sufficient justifications.

A District Court should begin by calculating the applicable Guidelines range. They are the starting point and the initial benchmark, but are not the only consideration. After the Court calculates the Guidelines, He must not presume that the Guideline range is reasonable but must make an individualized assessment based on the facts presented.

In this instant case it is the position of the defense that their Guidelines calculation is the correct version, however we submit that both calculations are unreasonable given the facts of the case as they pertain to Mr. Venezia.

The Court must next consider the sentencing factors as set forth in Section 3553(a) to determine whether they support the sentence requested by Mr. Venezia.

Mr. Venezia is charged with gambling and tax evasion. He is not a member of the "Chicago Outfit". He had no dealings with any of the co defendants other than the owner and employees of M&M Amusement. He has no criminal record, no history of violence and but for this indiscretion is a law abiding citizen. A period of probation would not deprecate the seriousness of the instant offense, it would promote respect for the law and provide a just punishment for the offense. It would serve as an adequate deterrence for others. There is no reason that the public would need to be protected from him nor any indication that he would commit other crimes. He is not in need of any educational, vocational, medical or other correctional treatment. This would not be an unwarranted sentence disparity. It would also give a better opportunity to make restitution if deemed appropriate.

A sentence of probation is commensurate with the offense, his back ground and is sufficient, but not greater than necessary , to comply with the purposes set forth above.

As indicated in the PSI, Mr. Venezia is married to a women who is in poor health and is dependent on him for financial support as well as assist her in her every day activities. He is also supporting his hearing impaired step son. Since the creation of the PSI, he has lost his elderly mother, but his son Frank has had a mental breakdown an attempted suicide. He was hospitalized for treatment and now depends on Joe for strength in getting through a most difficult time in his life.

As stated by the District Court in *Gall*, probation is not an "act of leniency" it is a "substantial restriction of freedom". The District Court went on to say that "Any term of imprisonment in this case would be counter effective by depriving society of the

contribution of the defendant who the Court has found, understands the consequences of his criminal conduct and is doing everything in his power to forge a new life. The defendant's post-offense conduct indicates neither that he will return to criminal behavior nor that the defendant is a danger to society. In fact the defendant's post-offense conduct was not motivated by a desire to please the Court or any other governmental agency, but was the pre indictment product of the defendant's own desire to lead a better life" These words describe Joe Venezia perfectly. I could not have said it any better.

We request that this Honorable Court temper justice with mercy and place Joe Venezia on a period of probation

Respectfully submitted
/x/ KEVIN P. BOLGER
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