

United States District Court
FOR THE DISTRICT OF NORTH DAKOTA
Southeastern Division

CR NO. C77-3003-01

UNITED STATES OF AMERICA, *
*
Plaintiff, *
* **U.S. District Court for the District
v.** * **of North Dakota,**
* **Southeastern Division**
LEONARD PELTIER, *
*
Defendant. *

VOLUME 26 (SENTENCING)

Pages 1-14

TRANSCRIPT OF PROCEEDINGS

BE IT REMEMBERED that heretofore on Wednesday, the 1st day of June, 1977, the above-named Defendant came before the Court for sentencing at the hour of 4:00 o'clock, p.m , before the Honorable PAUL BENSON, one of Judges of said court at Fargo, North Dakota,

A p p e a r a n c e s

The Plaintiff was represented by its attorneys, Messrs. Evan Hultman and Robert L. Sikma, both of Sioux City, Iowa; and Mr. Lynn E. Crooks, Assistant United States Attorney, Fargo, North Dakota.

The Defendant was present in person and was represented by his attorneys, Mr. Elliot A. Taikeff, New York, New York; and Mr. Bruce Ellison, Rapid City, South Dakota.

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Whereupon, the following proceedings, among others, were had and entered of record, to-wit:

THE COURT: C77-3003, United States of America versus Leonard Peltier.

Defendant and counsel, please come forward.

Mr. Peltier, do you know of any reason why sentence should not be passed in your case at this time?

DEFENDANT PELTIER: No legal reason, no.

THE COURT: Mr. Taikeff, do you know of any reason why sentence should not be passed in this case at this time?

MR. TAIKEFF: No, your Honor, I do not.

THE COURT: Mr. Peltier, do you desire to make a statement in your own behalf or present any information to the Court which the Court might consider in mitigation of punishment in your case?

DEFENDANT PELTIER: Yes I do.

Judge Benson, there is no doubt in my mind or my people's you are going to sentence me to two consecutive life terms. You are and have always been prejudiced against me and any native Americans who have stood before you. You have openly favored the Government all through this trial, and you are happy to do whatever the FBI would want you to do in this case.

I did not always believe this to be so. When I first {3} saw you in the courtroom in Sioux Falls, your dignified appearance misled me into thinking that you were a fair minded person who knew something of the law and who would act in accordance with the law which meant that you would be impartial and not favor one side or the other in this lawsuit.

That has not been the case, and I now firmly believe you will impose consecutive life terms solely because that's what you think will waive the displeasures of the FBI. Yet my people nor myself do not know why you would be so concerned about an organization that has brought so much shame to the American people, but you are. Your conduct during this trial leaves no doubt, that you will do the bidding of the FBI without any hesitation.

You are about to perform an act which will close one more chapter in the history of the failure of the United States Courts and the failure of the people of the United States to do justice in the case of a native American. After centuries of murder, of murder of millions of my people, brothers and sisters, by the white race of America could I have been wise in thinking that you would break that tradition and, commit an act of Justice? Obviously not, because I should have realized that what I detected was only a very thin layer of dignity and surely of not fine character.

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If you think my accusations have been harsh and, unfounded, I will explain why I have reached this conclusion and why I think my criticism has not been harsh enough.

First, each time my defense team tried to expose FBI misconduct in their investigation of this lawsuit and tried to prevent evidence of this, you claimed it was irrelevant to this trial, but the prosecution was allowed to present their case with evidence that was in no way relevant to this lawsuit.

For an example, an automobile blown up on a freeway in Wichita, Kansas; an attempted murder in Milwaukee, Wisconsin, which I have not been found guilty or innocent of; a van loaded with legally sold firearms; and a policeman who claimed someone fired at him in Oregon state.

The Supreme Court of the United States tried to prevent convictions of this sort by passing into law that only past convictions may be presented as evidence if it is not prejudicial to the lawsuit and only evidence of the said case may be used.

This Court was very wrong. I have no prior convictions nor am I even charged with some of these alleged, crimes. Therefore, they cannot be used as evidence in order to receive a conviction in this farce called a trial.

This is why I strongly believe you will impose two {5} life terms running consecutive on me.

Second, you could not make a reasonable decision about my sentence because you suffer from at least one of three defects that prevent a rational conclusion. You plainly demonstrated this in your decision about the Jimmy Eagle, and Myrtle Poorbear aspects of this case.

In Jimmy's case, for some unfounded reason that only a Judge who constantly and openly ignores the law, would call it irrelevant to my trial.

In the mental torture of Myrtle Poorbear you said the testimony would shock the conscience of the jury and the American people if believed, but you decided what was to be believed and what was not to be believed, not the jury.

Your conduct shocks the conscience of what the American legal system stands for -- the search for the truth by a jury of citizens. What was it that made you afraid to let that testimony in -- your own guilt of being part of a corrupted pre-planned trial to get a conviction, no matter how your reputation would be tarnished?

For these reasons I strongly believe you will do the bidding of the FBI and give me two consecutive life terms.

Third, in my opinion anyone who failed to see the relationship between the undisputed facts of these events surrounding the investigation used by the FBI in their {6} interrogation of the Navajo youths -- Wilfred Draper who was tied to a chair for three hours and denied access to his attorney or the outright threats to Norman Brown's life, the bodily harm threatened to Mike Anderson, and finally the murder of Anna Mae Aquash -- must be blind, stupid or without human

feeling, so there is no doubt or little chance that you have the ability to avoid doing today what the FBI wants you to do which is to sentence me to two life terms running consecutively.

Fourth, you do not have the ability to see that the conviction of an AIM activist helps to cover up what the Government's own evidence showed, that large numbers of Indian people engaged in that fire fight on June 26th, 1975. You do not have the ability to see that the Government must suppress the fact that there is a growing anger amongst Indian people and that native Americans will resist any further encroachment by the military forces of the capitalist Americans which is evidenced by the large number of Pine Ridge residents who took up arms on June 26th, 1975, to defend themselves.

Therefore, you do not have the ability to carry out your responsibilities towards me in an impartial way and will run my two life terms consecutively.

Fifth, I stand before you as a proud man. I feel no guilt. I have done nothing to feel guilty about. I have {7} no regrets of being a native American activist. Thousands of people in the United states, Canada and around the world, have and will continue to support me to expose the injustice that occurred in this courtroom.

I do feel pity for your people that they must live under such a ugly system. Under your system you are taught greed, racism and corruption, and the most serious of all, the destruction of our mother earth. Under the native American system we are taught all people are brothers and sisters, to share the wealth with the poor and needy; but the most important of all is to respect and preserve the earth, to me considered to be our mother. We feed from her breast. Our mother gives us life at birth; and when it is time to leave this world, she again takes us back into her womb; but the main thing we are taught is to preserve her for our children and grandchildren because they are next who will live upon her.

No, I am not the guilty one here and should be called a criminal. The white race of America is the criminal for the destruction of our lands and my people. To hide your guilt from the decent human beings in America and around the world, you will sentence me to two consecutive life terms without any hesitation.

Sixth, there are less than four hundred Federal Judge for a population of over two hundred million Americans. {8} Therefore, you have a very powerful and important responsibility which should be carried out impartially, but you never have been impartial where I was concerned. You have the responsibility of protecting constitutional rights and laws; but where I was concerned you neglected to even consider my or native American's constitutional rights; but the most important of all you have neglected our human rights. If you were impartial, you would have had an open mind on all the factual disputes in this case; but you were unwilling to allow for even the slightest possibility that a law enforcement officer could lie on the stand. Then how could you possibly be impartial enough to let my lawyers prove how important it is to the FBI to convict a native American activist in this case? You do not have the ability to see that such a conviction is an important part of the efforts to discredit those who are trying to alert their brothers and sisters to a new trick from the white man, an attempt to destroy what little Indian land remains in the process of extracting our uranium, oil and other minerals.

Again, to cover up your part in this, you will call me a heartless, cold-blooded murderer who deserves two life sentences consecutively.

Seven, I cannot expect a Judge who has openly tolerated the conditions I have been jailed under to make an {9} impartial decision on whether I should be sentenced to concurrent or

consecutive life terms. You have been made aware of the following conditions which I had to endure at the Grand Forks county jail since the time of the verdict.

One, I was denied access to a phone to call my attorneys concerning my appeal.

Two, I was locked in solitary confinement without shower facilities, soap, towels, sheets or pillow.

Three, the food was uneatable, what little there was.

Four, my family, brothers, sisters, mother and father who traveled long distance from the reservation were denied visitations.

No human being should be subject to such treatment while you parade around and pretend to be a decent, impartial and law-abiding.

You knowingly allowed your fascist Chief Deputy Marshal to play storm trooper.

Again, the only conclusion that comes to my mind is you have, and always knew, you would sentence me to two consecutive life terms.

Finally, I honestly believe that you made up your mind long ago that I was guilty and that you were going to sentence me to the maximum sentence permitted under the law, but this does not surprise me because you are a high-ranking member of the white racist American {10} establishment which has consistently said "In God we trust" while they went about the business of murdering my people and attempting to destroy our culture. The only thing I am guilty of and which I was convicted for was of being Chippewa and sioux blood and for believing our sacred religion.

THE COURT: Mr. Taikeff, do you have any statement to make in the Defendant's behalf or any information to present to the Court?

MR. TAIKEFF: I have nothing to add, your Honor.

THE COURT: Mr. Peltier, you have seen the pre-sentence report in this case?

DEFENDANT PELTIER: I have just glanced through it.

THE COURT: Do you have any comments or questions regarding it?

DEFENDANT PELTIER: I haven't read it.

MR. TAIKEFF: Counsel did read it in advance, your Honor --

THE COURT: (Interrupting) I beg your pardon?

MR. TAIKEFF: Counsel did read it in advance of showing it to the Defendant. Counsel did not find anything seriously inaccurate about it.

THE COURT: Mr. Hultman, does the United states have any recommendations or comments to offer?

MR. HULTMAN: May it please the Court, the Statute {11} has provided, for the taking of a life, the penalty, that that life likewise be taken.

In this instance, that statute and that law has been under consideration and its status -- has been in a questionable status for quite some time.

At the outset of this case, as the record indicates, I personally indicated that -- in the extradition proceedings that the Government would be bound, that that particular penalty could not and would not apply; and that is a part of the record today, of which I know the Court, I am certain, is aware.

That then means that the penalty which is left in effect is the minimum penalty under the law; and that is a life sentence which, of course, is a very, very serious sentence.

In this instance there was not one life which was taken, but two; and because of the prosecution that has taken place in the course of this trial, because that penalty does indicate that a life term is the minimum sentence in the case of a life being taken, it seems to me, your Honor, that is appropriate --

DEFENDANT PELTIER: (Interrupting) Who is going to pay for Anna Mae's death? It sure stinks. What do you want? Give me your best name. Who is going to pay for their deaths? You help me

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MR. CROOKS: (Interrupting) A lot of people would argue with that.

MR. HULTMAN: In the course of the taking of this particular life, your Honor, not one life was taken as far as this particular trial is concerned, but the taking of two; and it seems to me that in light of that, that consecutive terms would be appropriate.

THE COURT: Mr. Peltier, you were convicted as charged --

DEFENDANT PELTIER: (Interrupting) I was railroaded.

THE COURT: (Continuing) -- as charged in the indictments of two counts of premeditated murder. You were convicted and found guilty on each of those counts. The evidence is clearly sufficient to support the verdict of the jury.

You profess an interest and a dedication to the native people of this country, but you have performed a great disservice to those native people.

VOICE FROM AUDIENCE: Same to you.

DEFENDANT PELTIER: What about the Gestapo tactics being used on the Pine Ridge residents? What do you call that? The cold-blooded murder of Anna Mae Aquash, what do you call that?

VOICE FROM AUDIENCE: What about Joe?

DEFENDANT PELTIER: Are those two just being forgotten {13} about because they are native people?

THE COURT: On the verdict of the jury, it is adjudged that the Defendant, Leonard Peltier, has been convicted of the offense of first degree murder as charged in Count 1 and Count 2 of the indictment in violation of Title 18, United States Code, Section 2 -- Section 1111 and Section 1114.

It is further adjudged that the Defendant be committed to the custody of the Attorney General of the United States for imprisonment for life on Count 1.

It is further adjudged that the Defendant, Leonard Peltier, be committed to the custody of the Attorney General of the United States for imprisonment for life on Count 2, the sentence on Count 2 to run consecutively to the sentence on Count 1.

Mr. Hultman, is there anything more to be presented to the Court?

MR. HULTMAN: The Government has nothing further, your Honor.

THE COURT: Mr. Taikeff?

MR. TAIKEFF: Just one technical matter, your Honor.

The Clerk of the Court has provided me with a form, apparently supplied originally by the Court of Appeals for the Eighth circuit, which is basically a notice of appeal form.

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I have completed that form and signed it on the assumption that my Court appointment will continue on into the Eighth circuit, and I lodge that with the Clerk's office.

It will be served -- I understand the Clerk makes a copy of it and serves it upon the Government, and then it will be filed pursuant to my written request and I trust that I have, therefore, complied with all of the formalities to preserve Mr. Peltier's right of appeal.

THE COURT: You are advised, Mr. Peltier, that you do have the right of appeal; and if you were financially unable to pay the cost of the appeal, you can make application for appeal in forma pauperis.

MR. TAIKEFF: We make that application at this time, your Honor, to continue the finding of the Court of his status as a person without any financial means.

THE COURT: The application will be granted.

MR. TAIKEFF: Thank you, your Honor.

THE COURT: Is there anything more?

MR. TAIKEFF: Nothing at this time, your Honor.

THE COURT: Court is adjourned.

(Whereupon, at 4:23 o'clock, p.m., the hearing in the above-entitled matter was closed.)