

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA

UNITED STATES OF AMERICA,)	
Plaintiff,)	Case No. 4:15cr50
)	(4:12cr101)
v.)	
)	
JEFFREY A. MARTINOVICH,)	
Defendant.)	

MOTION FOR DOWNWARD VARIANCE

NOW HERE COMES Jeffrey A. Martinovich, proceeding pro se, in a Motion to Respectfully Request a Downward Variance in the re-sentencing for Case No. 4:15cr50. Mr. Martinovich respectfully requests this Honorable Court provide a downward variance from a determined Advisory Guidelines to a final sentence of zero months, or in the alternative time-served, based on the following factors:

1. Accepting the True Statement of the Case [submitted in this instant proceedings Defense Position Paper, the Rule 35 submission immediately following the initial sentencing, the Case No. 4:15cr50 and 4:12cr101 § 2255 Petitions and Amended Martinovich Affidavits, and also the COA/Appeals submissions to the Fourth Circuit for the respective cases], this District Court is presented with a significantly different set of evidence and documentation from the initial sentencing, all which is exculpatory for Mr. Martinovich, or at a minimum provides substantial mitigating factors.

2. Procedurally, this Court may find that the Sophisticated Means two-point sentencing enhancement is inappropriate in light of the True Statement of the Case, as earlier sentencing Judge Robert A. Doumar

also removed the government's addition of this incongruent enhancement. Clearly, Mr. Martinovich applied no sophisticated means of process or concealment, and on the contrary employed six law firms and a tremendous amount of documentation to ensure disclosure and transparency.

3. Again procedurally, this Court may find that the Loss Amount attributed is irrelevant and unsubstantiated in light of the True Statement of the Case and documentation. Applying the "even if" view, if Mr. Martinovich had inappropriately accessed this account for attorney fees, expert fees and management fees, this number is approximately \$200,000, which is substantially below the \$721,000 proposed, as well as below Sentencing Guidelines Table § 2B1.1's \$250,000 mark, therefore reducing the Loss Points from 14 to 10, and lowering the Guidelines range in Category II from 51-63 months to 33-41 months (also removing the Sophisticate Means enhancement further lowers the range to 27-33 months).

Any payments transacted from this noted account outside of the above allegations were for attorney payments, storage, accounting, and other regular fund operations, as counsel Mr. Woodward and AUSA Mr. Samuels were well aware [see Harbinger PLC Accounting & Tax Ledgers submitted]. The \$721,000 was an irrelevant number which Mr. Martinovich, embarrassingly, signed in the final seconds as Judge Wright Allen entered the courtroom, all in an attempt to not upset Judge Wright Allen. The following narrative of this ridiculous step in a long list of incompetent steps has been previously documented on the record in the District Court and Fourth Circuit:

"On September 29, 2016, seconds before the entrance of the Honorable Judge Allen to initiate resentencing for Martinovich, court-appointed-counsel, Mr. Lawrence Woodward, slid in front of Martinovich two

previously-unseen restitution and forfeiture orders, stating, 'Quickly, sign these before Judge Allen begins, to show her, even more, that you have accepted responsibility.'

Martinovich replied, 'But Larry, these numbers are totally fabricated!'

Mr. Woodward responded, 'I talked to (AUSA) Samuels, and he agreed to credit back all the items that don't apply once you start paying it.'

Mr. Martinovich is embarrassed that he fell for this final trick, in a long list of fraudulent proceedings during these negotiations, yet it was clear that AUSA Mr. Samuels and counsel Mr. Woodward all knew this number was significantly incorrect. [Affidavit].

4. Mr. Martinovich's exemplary conduct in nearly six years in the BOP, respectfully, warrants a substantial downward variance, as "(a) defendant's post-sentencing conduct may be taken as the most accurate indicator of his present purposes and tendencies and significantly to suggest the period of restraint and the kind of discipline that ought to be imposed upon him...When a defendant's sentence has been set aside on appeal, a district court at resentencing may consider evidence of the defendant's post-sentencing rehabilitation and such evidence may, in appropriate cases, support a downward variance from the advisory Federal Sentencing Guidelines range." [Pepper v. U.S., 179 LED 2D 196, 562 US 476 (2011)].

While incarcerated, Mr. Martinovich has worked exhaustively to bring to light the truth and reverse this legal imbroglio, all in an effort to get back to work restoring MICG stakeholders and himself. Yet, he has also made a substantial commitment to abide by the system, to educate and better himself, and to give back by substantially aiding and supporting fellow inmates. Mr. Martinovich has maintained

zero points and zero infractions for nearly six years, an almost impossible feat in a volatile prison system for even the most straight and narrow. Mr. Martinovich spent over four years housed in a higher-security facility, FCI Ft. Dix, labeled with an erroneous Greater Security Management Variable at a facility not designed for his classification, all in coordination with the U.S. Attorneys Office of Norfolk, Virginia, as FOIA request disclosures have revealed. [4:2018cv27, 18-7061]. Here, Mr. Martinovich was subject to an environment of continuous assaults, stabbings, and sexual assaults which he may detail for this Court if desired.

Rising above the violence, Mr. Martinovich committed to work as a GED tutor teaching math and reading to inmates in order to help them pass the GED Exams. He worked in the prison Law Library as a Law Clerk, and as an assistant to other clerks, in helping inmates navigate their complex legal and administrative challenges. Mr. Martinovich also worked as an assistant to Education Specialist Ms. Yi, as well as submitted an Adult Continuing Education (ACE) course for helping inmates re-entering the workforce, or entering it for the first time. Finally while at FCI Ft. Dix, Mr. Martinovich represented his unit as centerfielder on the softball team and point-guard on the basketball team, remarkably being selected to the league All-Star Team, and completed courses in Legal Research, Economics, and Guitar. [see Work Hist., Educ. Hist., Appendix].

After being transferred to FPC-Beckley, Mr. Martinovich has continued to maintain perfect conduct. He has worked in the Law and Leisure Library, being promoted to Grade 1 Head Clerk. He oversees the leisure library operations and compliance, the law library computer system and administration, the compliance for GED Education, and the technical training and classical literature ACE programs. Mr. Martinovich

has also facilitated the Job Skills and Parenting Workshops for inmates, as well as taught the 25-lesson ACE Course "Building Special Companies" based on his book "Zero to a Billion to Zero." Finally at FPC-Beckley, Mr. Martinovich has personally completed numerous technical training and classic literature ACE programs to include Reading Blueprints, Plant Operations, Measurements and Schematics, Creative Writing, "The Count of Monte Cristo," and "Atlas Shrugged." [see Work Hist, Educ. Hist]. Also, at FPC-Beckley 100% of Mr. Martinovich's pay for this work has been applied to his Restitution Order balance.

Over these six years of incarceration, Mr. Martinovich has maintained close ties with his family, friends and business associates. He has also written three books now prepared for publishing, to include "The Fall of MICG," a short booklet for MICG shareholders in which we all hope to finally write a successful final chapter, "Just One More: The Wisdom of Bob Vukovich," a contemporary parable with life lessons hopefully beneficial for many, and "Zero to a Billion to Zero," a business advisory narrative to hopefully help others learn from the great success of MICG, and more importantly learn from the list of mistakes which Mr. Martinovich personally made. Mr. Martinovich respectfully submits that he has channeled his energies into everything the Justice System would ask of him, plus much more.

5. Mr. Martinovich's extraordinary commitments to the community's civic and charitable needs, respectfully, warrant a substantial downward variance. "We conclude that the extent of the variance is reasonable as the district court adequately grounded the sentence in the 18 U.S.C. § 3553(a)(2012) factors." [U.S. v. Midgette, 728 Fed Appx. 224 (4th Cir. 2018)].

Mr. Martinovich achieved an impressive portfolio of personal

licensing, accreditation and honors to include Broker-Dealer (B/D) Principal, Registered Investment Advisor (RIA) Principal, Financial & Operations Principal, SIFMA Small Firms Board, Luter School of Business Board, and Chairman of Virginia for the Young President's Organization (YPO). Mr. Martinovich was honored to participate in the community as President of Big Brothers Big Sisters, Chairman of the Children's Village of Hampton Roads, Board Director for the USO and United Way Committees, and significant partner of the Boys & Girls Club and Achievable Dream Academy. He coached youth basketball for the YMCA, St. Andrews Episcopal Church, Newport News Parks & Recreation, and Hampton Roads Academy, along with funding the Academy's new baseball stadium, MICG Park.

Mr. Martinovich's company employed fifty employees and fifty independent agents among eight retail branches in Virginia, Washington D.C., and New York. MICG served over 3,000 clients in 42 states and 5 countries, managed \$1 billion in client assets, and provided a long list of sophisticated investment services to investors previously not able to access these institutional investments. Although MICG's revenue increased over 800% since 1998, Mr. Martinovich had not increased his personal salary, instead choosing to allocate the increased revenue to MICG's significant growth and support of its employees' communities. [Aff. #1,2, Trial Tr.].

Based on the above five factors and further consideration of the Court, Mr. Martinovich respectfully requests a downward variance from a determined Advisory Guidelines to a final sentence of zero months, or in the alternative time-served.

Respectfully,

Date: 08/22/2019



Jeffrey A. Martinovich