

CAROL C. F. ZGERALD
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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

IN RE PROCEEDINGS PURSUANT)
TO THE SENTENCING REFORM)
ACT OF 1984)
_____)

SUPPLEMENT TO
TEMPORARY SPECIAL ORDER NO. 66

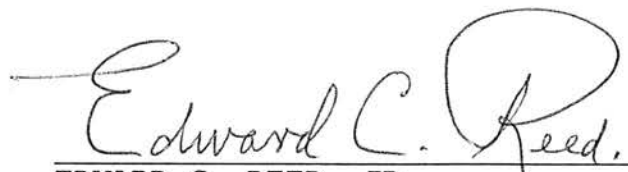
On August 23, 1988 a divided three-judge panel of the Ninth Circuit Court of Appeals held the Sentencing Reform Act of 1984 unconstitutional. Jose Gubiensio-Ortiz v. Al Kanahele, No. 88-5848 and United States v. Raul Chavez-Sanchez, No. 88-5109. Although that decision could be subject to a rehearing en banc, the court's ruling in Gubiensio-Ortiz, supra, constitutes the law of the Ninth Circuit regarding the constitutionality of the Sentencing Reform Act of 1984, which this court is bound to follow. However, because a similar constitutional challenge to the Act is currently pending before the United States Supreme Court which may further impact on the manner in which cases arising under the Act are treated, this court concludes that no immediate modification of the procedures provided for under Temporary Special Order No. 66 are required. Therefore, in an effort to provide a degree of continuity between the rules of this District governing proceedings pursuant to the Sentencing Reform Act of 1984, §3551, et seq. and the prior law,

IT IS HEREBY ORDERED that First Amended Temporary Special


1 Order No. 66 shall continue in effect pending further order of
2 this court;


3 IT IS FURTHER ORDERED that the United States Probation
4 Office for the District of Nevada shall affix an addendum to each
5 presentence report which shall include such additional matters
6 relevant to sentencing, including confidential recommendations,
7 as would have been submitted pursuant to the law and rules of this
8 Court which governed sentencing prior to the Sentencing Reform Act
9 of 1984.

10 DATED this 14 day of September, 1988.

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13 EDWARD C. REED, JR.
14 Chief United States District Judge
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18 LLOYD D. GEORGE
United States District Judge
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22 HOWARD D. MCKIBBEN
United States District Judge
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26 PHILIP M. PRO
United States District Judge

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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

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AND FILED

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CAROL C. FITZGERALD
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IN RE PROCEEDINGS PURSUANT)
TO THE SENTENCING REFORM ACT) FIRST AMENDED
OF 1984.) TEMPORARY SPECIAL ORDER NO. 66

Unless otherwise ordered, in all criminal proceedings prosecuted in the District of Nevada, except prosecutions for petty offenses, proceedings pursuant to the Sentencing Reform Act of 1984, §3551, et seq., shall be governed by the following rule:

1. All pleas of guilty shall be accomplished by a written plea agreement and, to the extent possible, a written stipulated statement of facts which complies with §§6B1.2 and 6B1.4 of the Sentencing Guidelines and which includes all terms of the plea agreement, all facts relevant to sentencing under the Guidelines and a statement of the parties identifying the base offense level applicable under the Sentencing Guidelines. Prior to the entry of the plea, counsel for defendant and counsel for the government shall make every effort to resolve all factual disputes material to sentencing and include them in the stipulated statement of facts in order to avoid the necessity of an evidentiary hearing at the time of sentencing.

1 2. Sentencing proceedings shall be scheduled no earlier than
2 seventy (70) days following entry of a plea of guilty or nolo
3 contendere, or a verdict of guilty following trial.

4
5 3. The presentence investigation report, including sentencing
6 worksheets, shall be completed and disclosed to the parties within
7 forty-five (45) days of the entry of a plea of guilty or nolo con-
8 tendere, or a verdict of guilty following trial. The presentence
9 investigation report, including sentencing worksheets, shall be
10 deemed to have been disclosed (1) when a copy of the report is
11 physically delivered, (2) one day after the report's availability
12 for pickup has been orally communicated to counsel by the probation
13 office, or (3) three days after a copy of the report or notice of
14 its availability is mailed by the probation office to counsel. It
15 shall be the responsibility of counsel for the parties, or a defen-
16 dant who is proceeding in proper person, to obtain a copy of the
17 presentence investigation report, including sentencing worksheets,
18 immediately after it becomes available.

19
20 4.A. CERTIFICATION AND CONCURRENCE WITH PRESENTENCE REPORT.

21 In the event there are no disputes regarding the presentence
22 investigation report, within six (6) days of the date on which
23 said report is made available by the probation office for
24 disclosure to the parties, counsel for the defendant and the
25 government shall certify in writing with the clerk of court that
26 none of the matters relevant to sentencing contained in the

1 presentence investigation report is in dispute. The form of
2 certificate to be utilized is attached hereto as Exhibit A. Said
3 certificate shall be filed in duplicate and shall reflect service
4 on the probation office.

5 B. MANDATORY CONFERENCE REGARDING DISPUTES WITH PRESENTENCE
6 REPORT. If matters relevant to sentencing contained in the
7 presentence investigation report are in dispute, within ten (10)
8 days from the date on which the presentence investigation report
9 is made available by the probation office for disclosure to the
10 parties, counsel for the defendant and the government shall meet
11 and confer with the probation officer who authored the presentence
12 investigation report, or with such other probation officer as shall
13 be designated by the chief probation officer, in a good faith effort
14 to resolve all disputes regarding sentencing factors, facts
15 material to sentencing and all other disputed items included in the
16 presentence investigation report. This presentence conference
17 and the Joint Sentencing Statement required by paragraph 6 of this
18 order are mandatory unless counsel file and serve the certificate
19 identified in paragraph 4A above.

20
21 5. Not later than ten (10) days prior to the sentencing
22 date, the final presentence investigation report, including all
23 adjustments made to the presentence investigation report as a
24 result of the presentence conference, the sentencing worksheets and
25 confidential recommendations to the Court, shall be filed with the
26 clerk of court under seal and a copy submitted to the sentencing

1 judge and, with the exception of the confidential recommendation,
2 to counsel for the defendant and the government.

3
4 6. Not later than four (4) days prior to the sentencing date,
5 counsel for the defendant and the government shall file with the
6 clerk of court, under seal, and shall serve upon the probation
7 office, a Joint Sentencing Statement. The form of statement to be
8 utilized is attached hereto as Exhibit B. The statement shall be
9 filed in duplicate with the clerk and shall be submitted with indi-
10 vidual envelopes for sealing as required by Local Rule 130-6. The
11 envelopes shall be 9-½" x 12-½" in size and labeled as indicated
12 in Exhibit C.

13
14 7. All copies of the presentence investigation report and
15 other documents specified in paragraph 5, supra, provided to the
16 parties, shall be returned to the probation office as follows:

17 a. where no appeal is taken from the sentence imposed
18 under the Sentencing Guidelines, within eleven (11) days of the
19 date on which the deadline for filing a notice of appeal from the
20 sentence expires;

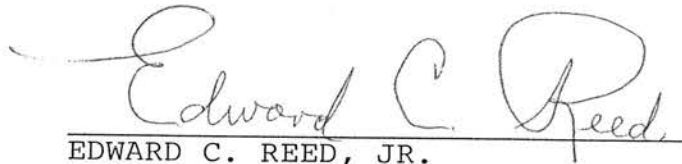
21 b. where an appeal of the sentence imposed under the
22 Sentencing Guidelines is taken by one of the parties, within eleven
23 (11) days of the completion of all proceedings on appeal.

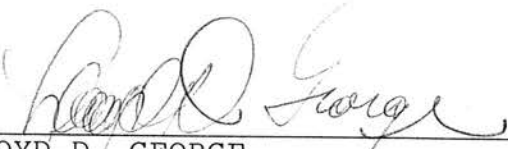
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25 Although copies of the presentence investigation report and
26 other documents identified in paragraph 5, supra, may be quoted


1 and/or referred to by the parties in connection with proceedings in
2 the District Court or on appeal, the parties are admonished that
3 they remain confidential documents and that any unauthorized copying
4 or disclosure of said documents shall be deemed an act of contempt
5 of Court and shall be punished accordingly.

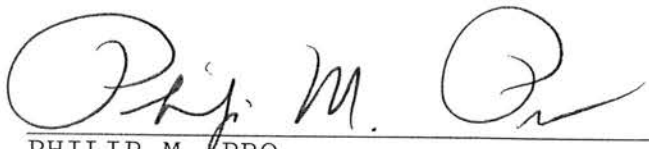
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7 Amended Special Order No. 31, filed by this Court on April 1,
8 1988, shall not apply to proceedings pursuant to the Sentencing
9 Reform Act of 1984, 18 U.S.C. §3551, et seq., which shall be
10 governed by this Temporary Special Order.

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12 Dated this 13th day of June, 1988.

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15 EDWARD C. REED, JR.
16 Chief United States District Judge

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19 LLOYD D. GEORGE
20 United States District Judge

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23 HOWARD D. MCKIBBEN
24 United States District Judge

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PHILIP M. PRO
United States District Judge

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UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

* * * * *

UNITED STATES OF AMERICA,)
)
Plaintiff,)
)
vs.)
)
_____,)
)
Defendant.)
_____)

CR-_____

CERTIFICATION AND CONCURRENCE WITH PRESENTENCE REPORT

Counsel for the Government, counsel for the defendant and the defendant hereby certify that they have reviewed the presentence report and that there are no matters relevant to sentencing contained in the presentence report in dispute. This certification is made pursuant to Paragraph 4 of Temporary Special Order No. 66.

Dated: _____

Counsel for the Government

Counsel for the Defendant

Defendant

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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

* * * * *

UNITED STATES OF AMERICA,)
)
Plaintiff,)
)
vs.) CR-_____
)
_____,)
)
Defendant.)
_____)

JOINT SENTENCING STATEMENT

I.

Defendant _____ having
(been convicted by a jury;
entered a plea of guilty; or on _____
entered a plea of nolo contendere)

the Presentence Report as to said defendant having been disclosed
by the United States Probation Office on _____
and the sentencing hearing as to said defendant having been set
for _____, counsel (and party pro se, if
applicable) certify that they have conferred with each other and
with the probation officer to resolve all disputes regarding
sentencing factors, facts material to sentencing and all other
disputed items included in the presentence investigation report.

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II.

Statement of objections of the parties to the final form of the Presentence Report and sentencing factors, facts and other matters material to sentencing which remain in dispute.

A. The following are the issues of fact to be tried and determined at the sentencing hearing.^{1/} (Each issue of fact must be stated separately and in specific terms.)

B. The following are the issues of law which pertain to the Sentencing Guidelines to be tried and determined at the sentencing hearing.^{1/} (Each issue of law must be stated separately and in specific terms.)

C. The following are other factors, facts and matters material to sentencing which remain in dispute.^{1/} (Each factor, fact and matter material to sentencing must be stated separately and in specific terms.)

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¹ Should counsel be unable to agree upon the language of the statement of issues of fact or law to be tried and determined at the sentencing hearing or the other factors, facts and matters material to the sentencing which remain in dispute, then there shall be included separate statements of issues of fact or law to be tried and determined at said hearing and separate statements of factors, facts and matters material to the sentencing which remain in dispute.

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III.

Statement of need for evidentiary hearing.

A. State whether an evidentiary hearing is needed.

B. State estimate of time required for evidentiary hearing. (Hearings are limited to one-half hour unless the Court upon justification permits additional time for hearing.)

C. Witnesses.

1. List Government's witnesses, with their addresses and a brief description of testimony to be offered by each.

2. List defendant's witnesses, with their addresses, and a brief description of testimony to be offered by each.

D. Exhibits.

1. The following exhibits will be offered:

- a. List exhibits to be offered by Plaintiff.
- b. List exhibits to be offered by Defendant.

2. As to the following exhibits, the parties have reached the stipulations stated regarding the same:

- a. Set forth stipulations as to plaintiff's exhibits.
- b. Set forth stipulations as to defendant's exhibits.

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1 3. As to the following exhibits, the party against
2 whom the same will be offered objects to their admission upon the
3 grounds stated:

4 a. Set forth objections to Government's exhibits.

5 b. Set forth objections to defendant's exhibits.

6 Insofar as necessary, the parties may attach additional
7 sheets as needed with regard to any of the above topics.

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APPROVED AS TO FORM AND CONTENT:

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Counsel for the Government

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Counsel for Defendant

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Defendant

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FORMAT FOR ENVELOPES FOR JOINT SENTENCING STATEMENTS

SIZE: 9½" x 12½"

(Not drawn to scale)

CR-S(N)-_____

UNITED STATES OF AMERICA,)

Plaintiff,)

vs.)

(Leave this area blank for
Clerk's file stamp.)

Defendant.)

JOINT SENTENCING STATEMENT
REGARDING DEFENDANT _____
(ORIGINAL)

CR-S(N)-_____

UNITED STATES OF AMERICA,)

Plaintiff,)

vs.)

(Leave this area blank for
Clerk's file stamp.)

Defendant.)

JOINT SENTENCING STATEMENT
REGARDING DEFENDANT _____
(COPY)

----- Sentencing Proceedings Shall ----- 70 Days -----
Be Scheduled No Earlier Than

← 45 Days →

45 Days After Conviction or Plea

6 Days After Disclosure of PSR

10 Days After Disclosure of PSR

5 Days →

10 Days Before Sentencing

4 Days Before Sentencing

10 Days Before Sentencing

4 Days Before Sentencing

← 4 Days →

Sentencing or Evidentiary Hearing

Preparation of PSR. (§13)

Certification and Concurrence. (§14A)

Mandatory PSI Conference. (§14B)

Counsel File Joint Sentencing Statement; Have Conferred With Probation Officer to Resolve Disputes, etc. (§16)

Conviction, Acceptance of Plea, or Contingent Acceptance of Plea.

Probation Officer Discloses PSR to Defendant, Defense Counsel and Government.

Method of Disclosure: Copies of PSR Will Be Provided To Defendant, Defense Counsel and Government.

Assignment of PSI.

The PSR Will Become a Part of the Record, Under Seal.

Probation officer Makes Necessary Revisions to PSR and Submits Final Report to All Parties. (§15)

Counsel Can Present Objections.

Sentencing.

Court Announces Proposed Findings of Fact and Conclusions of Law and Tentative Sentence.