

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF MISSISSIPPI

UNITED STATES OF AMERICA . Cause No. 3:07CR192  
. .  
Plaintiff . Oxford, Mississippi  
. July 2, 2008  
v. . 9:51 a.m.  
. .  
DAVID ZACHARY SCRUGGS .  
. .  
Defendant .  
. . . . .

SENTENCING AS TO COUNT 1 OF THE INFORMATION  
BEFORE THE HONORABLE NEAL B. BIGGERS  
U.S. SENIOR DISTRICT JUDGE

APPEARANCES:

For the Government: United States Attorney's Office  
Northern District of Mississippi  
BY: THOMAS W. DAWSON, ESQ.  
BY: ROBERT H. NORMAN, ESQ.  
900 Jefferson Avenue  
Oxford, Mississippi 38655-3608

For the Defendant: TODD P. GRAVES, ESQ.  
NATHAN GARRETT, ESQ.  
Graves, Bartle & Marcus, LLC  
1100 Main Street  
Suite 2600  
Kansas City, Missouri 64105  
816-256-3173

MICHAEL C. MOORE, ESQ.  
Michael Moore Law Firm, LLC  
10 Canebrake Boulevard, Suite 150  
Post Office Box 321048  
Flowood, Mississippi 39232

Court Reporter: Rita Davis Sisk  
911 Jackson Avenue, Room 369  
Oxford, Mississippi 38865  
(662) 281-3027

Proceedings recorded by mechanical stenography, transcript  
produced by computer.

1           **THE COURT:** All right. The next case on the docket  
2 is *U.S. v. David Zachary Scruggs*. Who's with him? Are they  
3 here? (Pause) Come up, gentlemen. All right. Let's get some  
4 order back there. All right. In this case -- it's Docket No.  
5 CR192, *U.S. v. David Zachary Scruggs*.

6           Mr. Graves, are you ready to proceed on that?

7           **MR. GRAVES:** We are, Your Honor.

8           **THE COURT:** All right. And who's going to be  
9 representing -- Mr. Dawson, you're representing the Government?

10          **MR. DAWSON:** Yes, sir. We are.

11          **THE COURT:** All right. Let your client come up,  
12 Mr. Graves.

13                 (Parties complying.)

14          **THE COURT:** Mr. Scruggs, on a previous day, you  
15 entered a plea of guilty to the crime of misprision of a  
16 felony. You're up before the Court now for sentencing. Is  
17 there anything you wish to -- before we get into that, I want  
18 to look at the sentencing guidelines in this case.

19                 Mr. Graves, I got your memorandum yesterday that you sent  
20 in. And you are aware of the guidelines that were set in the  
21 underlying offense at the previous hearing of the Court. You  
22 have filed some comments on those -- some objections to those  
23 guidelines that were set then. Do you want to stand by -- I  
24 read your objections, read the response from the Government.  
25 Do you want to stand by the record as it stands now before the

1 Court, or do you wish to make any comments on any of those  
2 objections?

3 MR. GRAVES: Your Honor, I'm sorry, there was nothing  
4 new that we hadn't argued before in our memorandum. We'll  
5 stand on the pleadings as filed.

6 THE COURT: All right. Does the Government agree to  
7 do that also?

8 MR. DAWSON: Yes, sir. We had thought about, late  
9 yesterday afternoon, filing a response. We discussed it with  
10 counsel, and they assured us that there was nothing new in  
11 their memorandum that they had not already presented to the  
12 probation service. And in view of that representation -- and,  
13 quite frankly, some technical problems with our ECF -- we  
14 decided not to file but just to respond as the Court would  
15 indicate.

16 THE COURT: Very well. All right. Then, looking at  
17 the guidelines as computed by the probation office, the Court  
18 finds in this case that the basic offense level is 12, the  
19 specific offense characteristics are 18, bottom four points;  
20 but they're adjusted down because of the statute to 19 because  
21 in misprision of a felony the offense level can be no more than  
22 19. So the Court finds that is the base offense level.

23 To give the defendant credit for adjustment of  
24 responsibility, deducts 3 points; so the total offense level in  
25 this case is 16. And the defendant has a criminal history

1 category of one. So that will be the guidelines in the case.  
2 And that calls for a -- with a total offense level of 16 and a  
3 criminal history category of one, the guideline range of  
4 imprisonment is 21 to 27 months and a fine of 5,000 to 50,000.

5 All right. Now, Mr. Graves, is there anything you wish  
6 to -- well, I'll ask you first, Mr. Scruggs, is there anything  
7 you wish to state prior to sentencing?

8 THE DEFENDANT: Yes, sir, Your Honor.

9 THE COURT: All right.

10 THE DEFENDANT: I am deeply sorry and regretful for  
11 my involvement in this case. I wish that I could go back and  
12 change what happened a year ago. And I should have stopped  
13 what happened, and I should have objected to what happened; and  
14 I didn't do that. And that's why I'm here today. And I -- for  
15 that, I'm deeply sorry and remorseful. And I ask this Court's  
16 forgiveness. And my challenge now is to try to rebuild my  
17 life, Your Honor. Thank you.

18 THE COURT: All right. Mr. Graves?

19 MR. GRAVES: Just two short sentences, Your Honor.  
20 The defendant spent a great deal of time discussing this, the  
21 tragedy that this is for him personally, of his own making. He  
22 understands -- he's ashamed beyond what I think he can even  
23 express to the Court, and I think -- I would ask the Court to  
24 take into consideration that the main individual in this case  
25 was this defendant's father and his mentor. And I think that

1 that should be something that the Court considers as it thinks  
2 about the sentence.

3 **THE COURT:** I usually only hear from one attorney.  
4 Do you want to say anything, Mr. Moore?

5 **MR. MOORE:** Judge, the only thing I will say, because  
6 I've known Zach since he was a little boy, what has occurred in  
7 this case is completely out of character for him. And I've  
8 counseled with him and worked with him over the last year, and  
9 I can promise the Court that he is very remorseful and very  
10 contrite and ashamed, ashamed of what has occurred.

11 **THE COURT:** Okay. Anything the Government wishes to  
12 add?

13 **MR. DAWSON:** If it please the Court, consistent with  
14 the plea agreement that we executed sometime ago prior to the  
15 defendant's entering a plea to this particular charge, we  
16 agreed that we would recommend to the Court, based on all the  
17 facts and circumstances, that the defendant receive a probated  
18 sentence. We meant that then and we mean that now. And we  
19 submit that to the Court for its consideration.

20 **THE COURT:** All right. Well, as counsel and the  
21 Government both know, and as the Court pointed out at the plea,  
22 any pleas for leniency by the Government or anyone else are not  
23 binding on the Court. And the Court primarily is bound by the  
24 sentencing guidelines that are the law, regardless of what any  
25 individuals ask for.

1           Your case is a sad case, Mr. Scruggs, as your attorney  
2 eloquently stated. The primary actor in this case was your  
3 father. It would not have happened without him. And it makes  
4 it even sadder that you, his son, was brought into it.

5           The evidence in this case shows that you were fully aware  
6 of this corruption -- attempted corruption of Judge Lackey.  
7 You took that order that Balducci brought up to your law office  
8 that -- the corrupt order that was attempted to be bought from  
9 Judge Lackey. And you made comments on it. You said where  
10 commas should be and what things should be said about it, what  
11 the order should say.

12           And based on some of those tapes that you -- that were  
13 played at the request of your attorney -- or your father's  
14 attorney, Mr. Kecker, and which I heard because they were  
15 produced, I just -- it was just clear that you not only knew  
16 what was going on, you were participating in what was going on.  
17 You helped write that order.

18           You shake your head, Mr. Moore; but I heard the tapes. He  
19 wrote -- he suggested what should be in that order, that  
20 corrupted order. Have you heard that?

21           MR. MOORE: Judge, I've listened to every tape,  
22 interviewed every witness.

23           THE COURT: Well, then, you've heard that if you've  
24 listened to every tape.

25           MR. MOORE: I did Judge --

1           **THE COURT:**   He commented on it.

2           **MR. MOORE:**   -- and I hope I get a chance to respond.

3           **THE COURT:**   Well, you've had your chance to respond.

4 Well, you can respond to that; you can respond to that. Go  
5 ahead.

6           **MR. MOORE:**   Thank you, Your Honor. Zach Scruggs  
7 never had any knowledge whatsoever that there was any  
8 conspiracy to bribe a judge in this case. Zach Scruggs, on  
9 March 28th, was at a meeting about a --

10          **THE COURT:**   He's not being sentenced for conspiracy  
11 to bribe a judge.

12          **MR. MOORE:**   I understand, Judge.

13          **THE COURT:**   He's being sentenced for misprision of a  
14 felony. But the underlying offense is the corruption of Judge  
15 Lackey. He knew that Judge Lackey was being corrupted, and he  
16 had an order there that he was looking at that was part of --  
17 that was an order that was being bought from Judge Lackey -- or  
18 being taken -- persuaded -- at the very least, that he --  
19 you're saying he knew -- that I know he knew -- was that this  
20 order was the result of a corruption or attempted corruption of  
21 Judge Lackey.

22          **MR. MOORE:**   Right. Your Honor, I --

23          **THE COURT:**   And whether it was for money or whatever  
24 else is really immaterial; it was a corrupt order.

25          **MR. MOORE:**   The only difference -- and I don't want

1 to offend the Court. But the only difference is, is that the  
2 only thing Zach knew was that Tim Balducci went to have a  
3 conversation with Judge Lackey. He never knew that anybody  
4 conspired to bribe a judge or to do something untoward.

5 The tape that you're talking about is a tape that occurred  
6 after Tim Balducci came to the Scruggs Law Firm on November the  
7 1st, wired up, wearing a wire, walked up the stairs, saying he  
8 was there to meet with two individuals, Sid Backstrom and Dick  
9 Scruggs.

10 Zach Scruggs, all the evidence would show, happened to  
11 walk in the room that day. He was never a part of that. And  
12 that's the only evidence the Government ever had in this case.  
13 And that may be a distinction without a difference in Your  
14 Honor's mind, but it's a distinction in Zach's mind.

15 THE COURT: Well, that's something you can argue.  
16 Whether or not that's true remains open. He hasn't pled guilty  
17 to being part of the bribery. And he's not being sentenced for  
18 part of the bribery.

19 You know, when Mr. Backstrom -- who's admitted he was part  
20 of the bribe -- and your client are as close as they were,  
21 they're up there in that office every day talking about  
22 their -- the legal projects of the firm -- and it's hard to --  
23 it's kind of a stretch of credulity to believe that Backstrom  
24 never mentioned that money was being sent down to Judge Lackey.  
25 You can claim that; you can argue that. And as far as the law

1 is concerned, I'm going to base the sentence on that. But  
2 whether or not I believe that is something else.

3 MR. MOORE: One thing I'd say, Judge, is -- and I  
4 know you've listened to some of the tapes, but I've listened to  
5 all of them. And if the Government has a different view, they  
6 can say it. With all of the conversations, hundreds of  
7 conversations, that were wiretapped and taped, there's no  
8 mention of Zach Scruggs in this case anywhere. He just --

9 THE COURT: I understand all of that. That's not  
10 part of this hearing.

11 What do you say, Mr. Dawson?

12 MR. DAWSON: I'd have to disagree with that  
13 statement. Mr. Scruggs -- Zach Scruggs is mentioned on some of  
14 the tapes.

15 THE COURT: That was my recollection also. And  
16 another thing that impressed me negatively about this, frankly,  
17 is that when you, Mr. Scruggs, and Mr. Backstrom were talking  
18 with Mr. Balducci over this order that he had brought to you  
19 before it had been entered by Judge Lackey, it was an order  
20 that you were commenting on how it should read and what it  
21 should say -- and you've told me that you have a great respect  
22 and love for the legal field, for the legal profession. And  
23 I'm -- I'm not questioning that.

24 But you certainly had no great respect for the Circuit  
25 Court of Lafayette County or Judge Lackey, because the tapes

1 show that you told Mr. Balducci and Mr. Backstrom that we need  
2 to hurry up and get this order signed before some other asshole  
3 gets the case. Now, that's a total thumb in your nose at the  
4 Lafayette County Circuit Court. And it contradicts your  
5 statement to the Court that you have a great love and respect  
6 for the legal profession.

7       Based on these considerations, and based on the sentencing  
8 guidelines that have been furnished the Court, you have no  
9 criminal history. I'm taking into consideration the  
10 Government's plea bargain with you. Of course, I told you when  
11 the plea bargain was entered into it was not a binding plea  
12 agreement.

13       If, really, the Government and defendants were serious on  
14 something that would bind the Court to a specific sentence, it  
15 would have been an 11(c)(1)(C) plea agreement like  
16 Mr. Backstrom had which bound the Court.

17       **MR. MOORE:** Your Honor, we were informed by the  
18 Government on that matter -- we asked for a binding plea and  
19 the Government --

20       **THE COURT:** You didn't get it. You were here when he  
21 entered a plea of guilty. It was not an 11(c)(1)(C); I told  
22 you it was not binding.

23       **MR. MOORE:** Judge, we know that. I just --

24       **THE COURT:** Well, all right. Then, if I want you to  
25 say anymore, Mr. Moore, I'll ask for it.

1           **MR. MOORE:** Judge, I appreciate that. I thought a  
2 lawyer could always respond to the Court respectfully.

3           **THE COURT:** No, you do not. I didn't ask you to  
4 respond. I wasn't saying anything to you; I was saying it to  
5 your client.

6           **MR. MOORE:** I apologize if I've offended the Court in  
7 some way representing my client, Your Honor.

8           **THE COURT:** Well, you know, it's not -- I'm not going  
9 to argue with you about it, but there's no -- this was never an  
10 11(c)(1)(C) plea agreement.

11           **MR. MOORE:** The only response I hope your -- it's  
12 okay for me to respond now. The only response I have is we  
13 attempted to do a binding plea, and the Government informed us  
14 that this Court would not accept a binding plea on probation.  
15 And that's why we did not do it that way.

16           **THE COURT:** Okay. So it was not an 11(c)(1)(C).

17           **MR. MOORE:** That's right, Your Honor.

18           **THE COURT:** All right. Then we're in agreement on  
19 that. But as I was saying, I am giving some weight to the  
20 Government's recommendation for leniency. The guidelines are  
21 from 21 to 27 months. Pursuant to the Sentencing Reform Act of  
22 1984, it is the judgment of the Court that the defendant, David  
23 Zachary Scruggs, is hereby committed to the custody of the  
24 Bureau of Prisons to imprisoned for a term of 14 months on  
25 Count 1 of this charge.

1           Upon release from imprisonment, you'll be placed on  
2 supervised release for a term of one year. The defendant shall  
3 comply with strict mandatory conditions while he's on  
4 supervised release. I'm not going to go over all of those at  
5 this time. The probation officer will go over them with you at  
6 that time. But suffice it to say, Mr. Scruggs, if you violate  
7 any of them, it means that you'll be back up before the Court  
8 for additional service.

9           It's further ordered that -- the Court has gone below the  
10 guideline range on the imprisonment time. The Court is of the  
11 opinion that the Court should and does hereby depart above the  
12 guideline range to the statutory fine. And the Court has  
13 considered the need for the combined sentence to reflect the  
14 seriousness of the offense and to offset the cost of the  
15 Government for the imprisonment and supervision of the  
16 defendant, which is estimated at \$2,100 a month for  
17 imprisonment and \$1,700 a month for supervision after release.  
18 So the fine in this case will be \$250,000.

19           Now, do you want to report to the institution that's  
20 designated for your service on your own?

21                   MR. GRAVES: Yes, Your Honor. We'd like to ask for a  
22 report and --

23                   MR. MOORE: Judge, we'd respectfully ask the Court in  
24 this case -- I believe the August 4th date was set for the  
25 others. This is probably a bit extraordinary for the Court,

1 but Mr. Scruggs's wife is pregnant with their third child. The  
2 child is due in October. I wondered if the Court would show  
3 this defendant mercy enough to allow him to report after his  
4 child is born.

5 THE COURT: You may file a written motion to that  
6 effect, the Court will consider it.

7 MR. MOORE: We will, Your Honor. We'd ask -- an  
8 additional request would be -- the fine is \$250,000 -- that he  
9 be given 30 days to pay that fine.

10 THE COURT: That'll be granted.

11 MR. MOORE: Thank you.

12 THE COURT: All right. So that we'll have some  
13 record that -- Mr. Scruggs, that you want to report on your  
14 own -- Ms. Morris -- this will be a statement that you agree to  
15 do that and that you will -- and it will not be necessary for  
16 the marshals to take you.

17 (Parties complying.)

18 MR. MOORE: Judge, one other request that the other  
19 defendants had -- and we were not prepared to do that today --  
20 is that we have not given any consideration whatsoever to where  
21 Mr. Scruggs would go. And we know that is strictly up to the  
22 Bureau of Prisons, but we know that the Court's recommendation  
23 sometimes carries some weight. Could I include that in our  
24 motion on the time to report due to his wife's pregnancy?  
25 Could I include a recommendation for your consideration?

