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Sentence

1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

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3 UNITED STATES OF AMERICA,

4 v.

09 CR 674 (LAP)

5 TOSHIN SAMUELS,

6 Defendant.

7 -----x

8 New York, N.Y.
9 September 11, 2014
10:06 a.m.

10 Before:

11 HON. LORETTA A. PRESKA

12 District Judge

13
14 APPEARANCES

15 PREET BHARARA

16 United States Attorney for the
Southern District of New York

17 PETER M. SKINNER

Assistant United States Attorney

18 WALDER HAYDEN

Attorneys for Defendant

19 ALAN SILBER

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1 (In open court; case called)

2 THE COURT: Mr. Silber, have you and your client had
3 adequate time to review the presentence report?

4 MR. SILBER: We have, your Honor.

5 THE COURT: Are there any objections to the
6 presentence report?

7 MR. SILBER: No. Maybe one -- it's not an objection,
8 just one small change.

9 THE COURT: Yes, sir.

10 MR. SILBER: At paragraph 134, which talks about the
11 amount of money that he earned while working at Red Lobster.
12 He was not a server. He was training as a server. His salary
13 is about half of what it says in there. I don't think it's
14 very important -- for accuracy. Everything else is fine.

15 THE COURT: So, as a trainer to be a server, right?

16 MR. SILBER: Correct.

17 THE COURT: And instead of 350 and 400 what number?

18 MR. SILBER: About half of that.

19 THE COURT: Which is what?

20 MR. SILBER: I'm mathematically challenged. Say 200.

21 THE COURT: We'll figure it.

22 175 to 200. Is that okay?

23 MR. SILBER: Yes, your Honor.

24 THE COURT: Thank you.

25 And is there any reason the presentence report should

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1 not be made part of the record?

2 MR. SILBER: None.

3 THE COURT: Thank you.

4 With respect to the offense level computation, I
5 accept the findings of the presentence report set forth at
6 paragraphs 75 through 88 which conclude that a total offense
7 level of 30 is appropriate.

8 With respect to the defendant's criminal history, I
9 accept the findings of the presentence report set forth at
10 paragraphs 89 through 97.

11 I have the government's letter dated August 27. Does
12 the government now move?

13 MR. SKINNER: Yes, your Honor. The government so
14 moves.

15 THE COURT: Excuse me. Forgive me. I forgot to
16 mention that the conclusion of the presentence report is that
17 the defendant is in Criminal History Category I.

18 As the government has set out in great detail in its
19 August 27 letter, this defendant has provided substantial
20 assistance to the government in prosecution. The government
21 evaluates Mr. Samuels' cooperation as significant and useful.
22 It states that his information was thorough, wide-reaching and
23 corroborated the government's investigation of the various
24 boiler rooms. Mr. Samuels' information also permitted the
25 government to develop a better understanding of the inner

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1 workings of the boiler rooms and the roles filled by the
2 different coconspirators.

3 Mr. Samuels' information also contributed to and
4 corroborated the government's parallel investigation of [REDACTED]
5 [REDACTED] boiler rooms.

6 The government also notes that Mr. Samuels was
7 prepared to testify against his codefendants but, of course,
8 there have been no trials in the case and, of course, I note
9 that Mr. Samuels testified at a Fatico hearing this past April
10 to address the factual disputes raised by defendants [REDACTED] and
11 [REDACTED].

12 With respect to Mr. Samuels' testimony in that Fatico
13 hearing, I found his testimony to be trustworthy and certainly
14 credited it in findings.

15 The government also believes that Mr. Samuels has
16 provided truthful, complete, and reliable information and notes
17 that his information was corroborated by numerous types of
18 other evidence.

19 The government notes that Mr. Samuels met with the
20 government on numerous occasions, proffered on numerous
21 occasions and the like and, thus, the extent and nature of his
22 assistance is substantial.

23 With respect to any injury suffered or danger, while
24 there is no information about specific threats to Mr. Samuels
25 or his testimony, Mr. Samuels did provide information about

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1 [REDACTED] and that individual was believed to have used violence
2 in the past and believed to have connections to Israeli
3 organized crime figures.

4 Also, Mr. Samuels testified at the Fatico hearings
5 despite threats by Mr. [REDACTED] to compel Mr. Samuels to work at
6 one of the boiler rooms. Despite any threats to his safety, I
7 note that Mr. Samuels has cooperated fully with the
8 government's prosecution efforts.

9 Finally, I note the timeliness of Mr. Samuels'
10 cooperation. While still in Israel he communicated his desire
11 to cooperate with the government and consented to extradition
12 without any promise of a cooperation agreement. I note that
13 Mr. Samuels was the first of the defendants to do so.

14 Accordingly, I find that Mr. Samuels has provided
15 substantial assistance to the government and is entitled to a
16 downward departure under Section 5K1.1.

17 Counsel, in addition I have the defendant's memorandum
18 in aid of sentencing delivered with a cover letter of
19 August 28, 2014 and with numerous letters attached to it.

20 Counsel, are there any additional written materials I
21 should be looking at?

22 MR. SILBER: No, Judge. That's the lot, I believe.

23 MR. SKINNER: No, your Honor.

24 THE COURT: Thank you.

25 Mr. Silber would you like to speak on behalf of

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1 Mr. Samuels?

2 MR. SILBER: I would, your Honor, but I'm going to be
3 brief because the written material really did cover the
4 waterfront.

5 I note two things. I think all of the papers,
6 especially the presentence report, sort of describe a
7 metamorphose in Toshin Samuels from the callow person that
8 committed this despicable crime -- and I don't think there's
9 any of us here that doesn't understand how despicable the crime
10 was -- to somebody who I think is different, who stands before
11 you.

12 One of the things that struck me was his age. When he
13 went to Israel, having left odd circumstances and being adrift,
14 he was 20-years-old. He stands -- that's a boy in many
15 instances and I think in this instance. He stands before you
16 for sentencing today, 27-years-old, a man who served 42 months
17 incarceration, who's been at liberty now I think for 23 months
18 on bail pending sentence, which the government consented to and
19 which this court ordered.

20 So I do think that in some real ways there's a
21 different person standing before you for sentencing. And I
22 only note what the probation department said in -- I'm
23 appreciative of the long and detailed and really truthful brief
24 in support of the 5K1 with downward departure that the
25 government filed. And I note only that on page 37 of the

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1 presentence report where the government says the report does
2 not take defendant's cooperation into account.

3 THE COURT: Right.

4 MR. SILBER: However, given what we know, the extent
5 and duration, the recommendation would be time served which of
6 course is what I think we made it clear in our sentencing
7 memorandum that's what we're asking for, and a term of two
8 years supervised release.

9 Very briefly, Judge, I believe that is the sentence
10 that is fair and warranted. It's warranted by the remorse of
11 this client which by all accounts is very genuine. The
12 probation department believes so. I believe so. I think
13 everybody who met Mr. Samuels at this juncture really believes
14 so. His cooperation was obviously valuable.

15 What I think is really important for this court to
16 know is that the rehabilitation process with him has really
17 worked and in some senses -- and I think he'll tell you this --
18 that being arrested and incarcerated for as long as he was
19 really worked to his advantage and is going to give him a new
20 start in life.

21 So I think that there's an interesting thing about his
22 volunteering. He's done it all of his life. In fact, the
23 probation department notes again on page 37 that she had to
24 tell him listen, take care of earning a living.

25 THE COURT: Enough with the volunteering.

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1 MR. SILBER: Take care of getting your finances set.
2 This is what he really has to do as a young man. The deficits
3 from a criminal conviction alone are going to be serious and
4 severe and there is going to be, I understand, a judgment of
5 restitution that's never going to be able to be paid, that's
6 also going to really harm him financially as he tries to
7 rebuild his life and move forward in a good way.

8 So having said all of those things, we really do ask
9 that you impose the same sentence that was imposed on [REDACTED]
10 [REDACTED], the other cooperator, of time served. I understand
11 that she spent ten more months in jail than he did, but on the
12 other hand I believe her guidelines was two levels higher.

13 Thank you, Judge.

14 THE COURT: Thank you.

15 Mr. Samuels, would you like to speak on your own
16 behalf?

17 THE DEFENDANT: Yes, your Honor.

18 THE COURT: Yes, sir.

19 THE DEFENDANT: This is an important moment for me
20 because it's my chance for a beginning at a new life.

21 THE COURT: Take your time, sir.

22 MR. SILBER: Judge can we take two minutes and let the
23 defendant compose himself.

24 THE COURT: Of course.

25 MR. SILBER: He's got things to say and he's having

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1 trouble right now.

2 THE COURT: Take your time, sir.

3 You let me know when you're ready.

4 THE DEFENDANT: I think I'm ready.

5 This is an important moment for me because it's my
6 chance for a new beginning, new life. However, I can't help
7 but think of the victims in my case, how they trusted and
8 relied on me, and are left feeling like I truly deserve
9 nothing, none of what I ask you for. I may never forgive
10 myself for my actions. But I know it's all about my actions
11 from henceforth. I've been talking a lot about actions. We
12 are all our own authors of our own autobiography and our
13 actions are what narrate it. When I was incarcerated we had
14 ministers come in every Sunday to give us Bible studies. One
15 of these ministers once told me it's our walk that is
16 important. This is our greatest testimony to the world. She
17 said she gives testimony to every person she comes across and
18 occasionally says something. I have focused on my walk. I
19 know that life is all about learning, growing and the decisions
20 we make. I believe the secret to our success is hidden within
21 our many failures. I have learned we must be open to learn
22 from our failures and then turn what we learn into action.
23 It's a sobering truth that through our mistakes and many
24 failures we have possibly the greatest opportunity for
25 self-growth and wisdom. I am determined to learn from my

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1 mistakes and not repeat them. I'm determined to not ever put
2 myself in a situation like this. I'm determined to dictate my
3 own future, one I can be proud of. And I'm determined to make
4 a difference both in my life and my neighbor's. I have been
5 given a new lease on life and I genuinely owe my life to
6 everyone involved in my arrest. I want to thank them from the
7 bottom of my heart. I have learned, I have grown, I have
8 changed for the better and I will never go back. Thank you and
9 everyone else involved in my incarceration for saving me.

10 Thank you, your Honor.

11 THE COURT: Yes, sir. Thank you.

12 Mr. Skinner, would the government like to be heard and
13 if you would, if you would address the financial penalties,
14 please.

15 MR. SKINNER: Thank you, your Honor.

16 First with respect to Mr. Samuels' cooperation. As
17 outlined in our 5K memorandum, it was valuable and useful. And
18 I don't have much more to say other than what we have in there.

19 I think with respect to -- well one thing I will
20 observe. I do think it was particularly difficult for
21 Mr. Samuels to testify at the Fatico hearing and to confront
22 Mr. [REDACTED] and Mr. [REDACTED], both of whom I think he genuinely has
23 some fear of, particularly Mr. [REDACTED]. Not often that
24 cooperators are asked to actually testify and confront the
25 people that they are cooperating against. He should get some

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1 credit for getting up there on the stand and doing what needed
2 to be done.

3 I did also have the opportunity, we spent some time
4 with Mr. Samuels preparing for his testimony and proffering him
5 earlier in this case with respect to other investigations. I
6 originally had a difficult time reconciling that young man that
7 I met with the person that I saw in the videotape. And I think
8 to echo what defense counsel said I do think this is one of
9 those rare instances where somebody has had a genuine
10 transformation in their outlook on life. I don't think that
11 the remorse that you just saw from Mr. Samuels is crocodile
12 tears, for lack of a better word. I do think it's genuine. I
13 do think he's changed from who he was when he was in Israel
14 perpetrating this fraud.

15 With respect to the financial penalties, we're seeking
16 restitution in the amount of \$8.2 million. We have submitted a
17 restitution order to that effect. That represents the loss to
18 the victims from the three boiler rooms, the Negev Street
19 boiler room, as well as the Arad Street boiler room, as well as
20 the Eilat Street boiler room. Mr. Samuels worked at both the
21 Arad and Negev Street boiler rooms. And he visited the Eilat
22 Street boiler room and, pursuant to his own testimony, worked
23 hand-in-hand in that boiler room and defrauded certain victims
24 of the Eilat Street boiler room. So we think that he should be
25 held responsible for the loss of the victims from all of those.

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1 We have put in the restitution order. Of course it is
2 joint and several with all the other defendants charged in the
3 case, as well as with  , another participant in the
4 fraud who was charged under a separate indictment number and
5 who was previously sentenced by Judge Baer.

6 All of that being said, unless the court has any
7 further questions.

8 THE COURT: And the government is seeking forfeiture
9 in the amount of?

10 MR. SKINNER: Yes, your Honor. The same amount of 8.2
11 million. We already have orders of forfeiture that were signed
12 by Judge Jones at the time of the defendant's pleas.

13 THE COURT: I think I may have misplaced the
14 restitution order; so if you would submit another one, I would
15 be appreciative.

16 MR. SKINNER: Oh, sure.

17 We have a copy. Defense --

18 THE COURT: Oh, I have the order. Thank you, counsel.
19 Anything else to add, Mr. Silber?

20 MR. SILBER: No, your Honor.

21 THE COURT: Very well. Thank you.

22 Counsel, obviously I have taken -- calculated the
23 guidelines and taken them into account. The nature and
24 circumstances of the offense are adequately described by the
25 total offense level.

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1 As to the history and characteristics of the
2 defendant. Of course, Mr. Samuels is in Criminal History
3 Category I. But as counsel have pointed out, as the
4 presentence report points out, and I believe as Mr. Samuels'
5 letter demonstrates, that does not begin to tell the story.

6 First, Mr. Samuels' cooperation has been truly
7 extensive and extraordinary. He cooperated and indicated his
8 desire to cooperate at a very early time, ahead of anyone else
9 and without any promises of a cooperation agreement. He waived
10 extradition and so was brought back to begin cooperating
11 promptly.

12 His cooperation was extensive and, as Mr. Skinner
13 points out, I particularly credit his testimony in the Fatico
14 hearing against Messrs. [REDACTED] and [REDACTED]. And I do have in mind
15 his not unfounded fear of those individuals.

16 The second part of Mr. Samuels' history and
17 characteristics that is so extraordinary has also been
18 commented on by counsel and the probation department and is
19 also evident in Mr. Samuels' letter. And that is his entire
20 change in outlook. Mr. Samuels spoke this morning about
21 learning from his mistakes. Well, he has done so perhaps more
22 than any other defendant I have seen. He is to be
23 congratulated for that and I find that to be an extraordinary
24 part of his history and characteristics.

25 With respect to the paragraph two factors. As has

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1 been the case with other defendants in this case, normally
2 there would be a need for a serious sentence of incarceration
3 to reflect the seriousness of the offense and to provide
4 general deterrence. Here, of course, in light of Mr. Samuels'
5 cooperation and his changing his life and his outlook, further
6 incarceration is not required.

7 As to paragraph C, again, there is no need to protect
8 the public from further crimes of this defendant.

9 There is no need to address any of the factors in
10 paragraph D.

11 I have taken into account the paragraph 3, 4, and 5
12 factors.

13 As to paragraph 6, the need to avoid unwarranted
14 sentencing disparities, the sentencing disparity here is
15 entirely warranted as a result of Mr. Samuels' cooperation and
16 his turning his life around.

17 Finally, as to the need to provide restitution, of
18 course it's easier to provide restitution when one is not
19 incarcerated.

20 Accordingly, counsel, it is my intention to impose a
21 sentence of time served, followed by a period of two years of
22 supervised release.

23 It is my intention to adopt the special terms and
24 conditions of supervised release that are suggested; which are
25 access to requested financial information by the probation

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1 officer, not incurring new credit charges, etc. without
2 approval unless in compliance with the installment payment
3 schedule, and submission to a search.

4 It is not my intention to impose a fine.

5 It is my intention to execute the restitution order in
6 the amount of \$8.2 million and the order of forfeiture in the
7 amount of \$8.2 million.

8 It is my intention to require payment at an amount no
9 less than ten percent of Mr. Samuels' gross monthly income.

10 And it is my intention to impose the mandatory \$300
11 special assessment.

12 Counsel, is there any reason such a sentence should
13 not be imposed?

14 MR. SILBER: No, Judge. There is no reason.

15 MR. SKINNER: No, your Honor.

16 THE COURT: Very well.

17 Mr. Samuels, you're sentenced, sir, to time served.
18 You'll now begin a period of two years of supervised release.
19 During that time you'll comply with all of the standard terms
20 and conditions of supervised release. Among them are that you
21 not commit another federal, state, or local crime; you not
22 illegally possess a controlled substance; and you not possess a
23 firearm or other destructive device.

24 In addition to those and the other general terms and
25 conditions of supervised release, during that time you will

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1 provide the probation officer with access to any requested
2 financial information. You will not incur any new credit
3 charges or open any additional lines of credit without
4 permission of the probation officer unless you are in
5 compliance with the installment payment schedule.

6 You will also during that period submit your person,
7 residence, place of business, vehicle, or any other premises
8 under your control to a search on the ground that the probation
9 officer has reasonable belief that contraband or evidence of a
10 violation of the terms and conditions of your supervised
11 release can be found there. Such a search must be conducted at
12 a reasonable time and in a reasonable manner. Failure to
13 submit to such a search might be grounds for revoking your
14 supervised release.

15 Counsel, I don't see a recommendation for substance
16 abuse treatment, if required. What do we think about that?

17 MR. SILBER: I'm supportive of whatever conditions the
18 probation department recommended in the PSR.

19 THE COURT: Well I don't see that one there but I do
20 note in reading the PSR that Mr. Samuels had some substantial
21 periods in his life when he was using drugs.

22 MR. SILBER: That's true, your Honor.

23 THE COURT: And I wonder if we shouldn't order that if
24 the probation officer deems it appropriate that Mr. Samuels
25 participate in substance abuse counseling.

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1 MR. SILBER: I have no objection to the court ordering
2 that as an additional condition.

3 MR. SKINNER: Your Honor, I'll note on page 38 the
4 probation department recommends a mandatory drug testing
5 condition given what they deem to be some risk of future
6 substance abuse.

7 THE COURT: Right. Okay.

8 So, Mr. Samuels, you will submit to mandatory drug
9 testing and to the extent that the probation officer deems it
10 necessary you'll participate in substance abuse counseling
11 and/or treatment.

12 As I mentioned, I impose the restitution amount of
13 \$8.2 million. That will be joint and several with the
14 codefendants in this case and with Mr. Getto.

15 I also impose the forfeiture amount of \$8.2 million.

16 Payment on the financial penalties should begin 30
17 days after entry of the judgment in this case. Payments should
18 be monthly in an amount not less than ten percent of your gross
19 monthly income. Payments should be made to the Clerk of Court,
20 United States District Court, Southern District of New York,
21 500 Pearl Street, New York, New York 10007. The clerk will
22 disburse payments from time to time to the victims of the
23 fraud.

24 Finally, sir, I must impose and do impose the \$300
25 special assessment and that should be paid promptly.

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1 Mr. Samuels it's my duty to inform you that unless
2 you've waived it, you have the right to appeal this sentence
3 and you might have the right to appeal in forma pauperis, which
4 means as a poor person with the waiver of certain fees and
5 expenses.

6 Counsel, is there anything further?

7 MR. SILBER: Nothing from here, Judge.

8 MR. SKINNER: No, your Honor. Thank you.

9 THE COURT: Thank you.

10 Mr. Samuels.

11 THE DEFENDANT: Yes.

12 THE COURT: Your letter and your remarks were
13 extraordinary. You should be proud of yourself. As counsel
14 pointed out, you entered into this scheme as a young person --
15 not that a young person shouldn't have known better -- but you
16 have matured. You have a wonderful outlook. And I'm sure you
17 have great promise. Now you take all of that out there and you
18 do the right thing. Good luck to you, sir.

19 THE DEFENDANT: Thank you.

20 THE COURT: Yes, sir.

21 Thank you, counsel, for your assistance.

22 MR. SKINNER: Thank you, Judge.

23 MR. SILBER: Thank you.

24 (Adjourned)