

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA,

Plaintiff,

-against-

MEMORANDUM AND ORDER
04 CR 847 (ILG)

STEVEN WOGHIN,

Defendant.

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GLASSER, United States District Judge:

Steven Woghin pleaded guilty to Conspiracy to Commit Securities Fraud, in violation of 18 U.S.C. § 371 and Obstruction of Justice, in violation of 18 U.S.C. § 1512(c)(2). The sentence imposed was a term of imprisonment for 24 months to be followed by 3 years of supervised release. A special assessment of \$200 was required and ordered to be paid. It is hereby directed that, for the reasons that follow, that sentence shall be served in the custody of the Bureau of Prisons for a year and a day and the balance thereof in home confinement.

The factors set out in 18 U.S.C. § 3553(a) were considered in informing the court's determination regarding sentence imposed and were discussed at some length as the minutes of the sentencing proceeding will reflect.

Steven Woghin is 59 years old and, prior to the offenses to which he pleaded guilty, had an unblemished record. He was a practicing lawyer for 33 years, 10 of which were in the service of the United States Department of Justice in various capacities. The two offenses to which he pleaded guilty were committed during his tenure as General Counsel and Senior Vice President of Computer Associates. A thick volume of letters from persons in all walks of life portray a gentle, sensitive, generous person, loyal friend

and very capable lawyer. Virtually all express disbelief that he would be standing before a court awaiting the imposition of a sentence.

“The enhanced scope of a sentencing judge’s discretion in the post-Booker world of advisory Guidelines,” United States v. Jones, 460 F.3d 191 (2d Cir. 2006) needs no elaboration. The Court was mindful of the statutory direction that the sentence imposed shall be sufficient but not greater than necessary and obeyed it. The Court is also mindful that in imposing sentence it shall consider “the kinds of sentences available” § 3553(a)(4). In this regard, the Court is mindful, too, of 28 U.S.C. § 994(d), which directs the Sentencing Commission in determining the nature, extent and place of serving a sentence to consider the following factors with respect to a defendant: age; education; vocational skills; physical condition; mental and emotional condition; previous employment record; family ties and responsibilities; community ties; role in the offense and criminal history. Although the statute is directed at the Sentencing Commission, it is infinitely more appropriate that it should be addressed to the Court. Surely, the Court who has had the defendant before him, who is intimately familiar with the circumstances of and, in a case such as this, the complexity of the environment in which the offenses were committed, a sense of the defendant provided by voluminous letters on his behalf and the extent to which the government has described his cooperation in the successful prosecution of others is far better positioned to determine the nature, extent and place of serving a sentence. In this post-Booker world the Guidelines scheme being advisory, Guidelines ranges themselves are no more binding on the sentencing judge than the Guidelines themselves. The historic role of sentencing judges in exercising their own sense of what is reasonable, fair and just borne out of many years of

experience and literally hundreds if not thousands of sentences imposed, may still continue to be exercised. See United States v. Jones, *supra*, at 195.

In a letter addressed to the Court dated January 31, 2007, the government “agrees that the Supreme Court’s holding in United States v. Booker, 543 U.S. 220 (2005), renders U.S.S.G. § 5C1.1 advisory, as it does all federal sentencing Guidelines. Accordingly, the Court has the discretion to fashion a split sentence for Mr. Woghin if it believes such a sentence appropriate.”

The Court deems such a sentence to be appropriate. “Without such options, the current sentencing regime fails to accomplish its retributive, deterrent and rehabilitative goals.” Demleitner, Smart Public Policy: Replacing Imprisonment With Targeted Nonprison Sentences and Collateral Sanctions, 59 Stanford Law Review 339, 345 (2005).

It is recommended that the sentence be served at the federal prison camp in Otisville, New York.

SO ORDERED.

Dated: Brooklyn, New York
February 6, 2007

S/
I. Leo Glasser