

FILED
KING COUNTY, WASHINGTON
APR 03 1990
SUPERIOR COURT CLERK

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF KING

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STATE OF WASHINGTON,)
)
Plaintiff,) NO. 89-1-04034-1
)
vs.) SENTENCING MEMORANDUM
) FOR JEFFREY W. DEAN
JEFFREY W. DEAN,)
)
Defendant.)

SENTENCING COURT: The Honorable Jim Bates
SENTENCING DATE: April 6, 1990 at 1:00 p.m.
CHARGES: Theft in the first degree (23 counts)
STANDARD RANGE: 43 to 57 months

DEFENSE RECOMMENDATION

The defense recommends adoption of either of the following sentencing options:

(1) First Offender Waiver, one month confinement on each count; each count to run consecutively to the other counts (total confinement: 23 months); confinement to be served in home detention; or

(2) Exceptional Sentence of 23 months confinement in home detention; each count to run concurrently with the other counts.

FACTS

Jeffrey W. Dean is a 46 year old man who is the husband of Deborah Dean and the stepfather of 10 year old Carl. Jeff Dean lives in North Seattle with his wife and stepson. Mr. Dean also has two children, Brett and David Dean, who are emancipated. Mr. Dean is presently employed.

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1 Mr. Dean is a former Boeing engineer who has also been
2 president of a local airplane outfitting firm, as well as
3 partner in Dean Redman and Associates (DRA).

4 The State's Certification for Determination of Probable
5 Cause adequately describes the offenses to which Mr. Dean has
6 pled guilty. However, a full appreciation of this case requires
7 consideration of additional facts.

8 When the Culp, Guterson & Grader (CGG) law firm discovered
9 Mr. Dean's alleged thefts, attorneys from CGG confronted Mr.
10 Dean in a surprise meeting on March 11, 1988. (Ex. 1-C).
11 According to CGG, Dean quickly admitted the thefts. (Ex. 1-D).
12 During the initial confrontation, and in the ensuing days and
13 weeks, Dean cooperated fully in supplying CGG with records and
14 other information. (Ex. 1-D).

15 In addition to cooperating fully with CGG, Dean made
16 immediate and repeated efforts to arrange for repayment. (Ex.
17 5-B). Notes of CGG partner John Ebel reflect conferences with
18 Dean on 3/14/88, 3/16/88, 4/14/88, 4/21/88, 5/10/88, and 5/26/88
19 during which Dean and Ebel discussed a repayment plan. (Ex.
20 2). Deborah Dean also joined in Jeff's efforts to repay CGG.
21 (Ex. 3). CGG took the Dean's repayment offer to be in good
22 faith, as evidenced by CGG's responsive proposal. (Ex. 4). The
23 Dean's repayment efforts were hampered, however, by the
24 garnishment and attachment of their property, pursuant to a
25 lawsuit filed against them by CGG. The Deans were unable to
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1 hire counsel in this lawsuit, and on September 7, 1988, CGG took
2 a summary judgment against the Deans for \$560,731.21. (Ex. 7-B).

3 More than six months after the discovery of the thefts and
4 Mr. Dean's attempts to repay CGG, CGG reported the thefts to the
5 police. (Ex. 5-A). Two months later, Dean was arrested. Again
6 Dean was cooperative, voluntarily providing a handwriting
7 exemplar to the police and agreeing to meet with a prosecuting
8 attorney. (Ex. 6).

9 Meanwhile, CGG bought the real estate contract for the
10 Dean's home, and started forfeiture proceedings. (Ex. 7-C). On
11 March 27, 1989, Deborah Dean paid \$26,300.01 to CGG to pay off
12 the real estate contract balance. (Ex. 7-C). Later Deborah was
13 forced into bankruptcy. (Ex. 7-C). Eventually, in exchange for
14 CCG's satisfaction of judgments against Deborah, the Deans
15 agreed to surrender their home to CCG. (Ex. 7). The Deans' home
16 had been appraised at between \$300,000.00 and \$360,000.00. (Ex.
17 7-F). CGG was to sell the Deans' home, and credit the net
18 proceeds against the amount owed by Jeff Dean. (Ex. 7).

19 Several months later, CGG sold the Deans' home for a mere
20 \$225,000.00.

21 On July 27, 1989, Jeff Dean appeared for arraignment on 10
22 counts of first degree theft. The matter was continued several
23 times to resolve questions regarding Mr. Dean's representation.
24 Serious plea negotiations were undertaken but were not
25 successful. On November 3, 1989, the matter was set for trial.
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28 SENTENCING MEMORANDUM FOR - PAGE 3
JEFFREY W. DEAN
5158L

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Associated Counsel for the Accused
618 Second Ave., Suite 400
Seattle, Washington 98104
624 4105

1 and 13 additional counts were added. On February 6, 1990, prior
2 to the matter being called for trial, Mr. Dean entered pleas of
3 guilty to all counts.

4 BASIS FOR DEFENSE RECOMMENDATION

5 The starting point in imposing an SRA sentence is to
6 consider the purposes of sentencing in light of the facts of the
7 case. The SRA is designed to:

- 8 (1) Ensure that the punishment for a criminal offense
9 is proportionate to the seriousness of the
offense and the offender's criminal history;
- 10 (2) Promote respect for the law by providing
11 punishment which is just;
- 12 (3) Be commensurate with the punishment imposed on
others committing similar offenses;
- 13 (4) Protect the public;
- 14 (5) Offer the offender an opportunity to improve him
15 or herself; and
- 16 (6) Make frugal use of the state's resources.

17 RCW 9.94A.010.

18 A major purpose of the SRA was to achieve a measure of
19 consistency in sentencing. However, sentencing guidelines can
20 seriously undermine this goal by placing immense discretionary
21 power in the hands of the prosecutors. The defense can find no
22 better authority for this proposition than U.S. District Court
23 Judge William L. Dwyer, formerly of Culp, Dwyer, Guterson &
24 Grader. (Ex. 8-A). According to Judge Dwyer, sentencing
25 guidelines do not eliminate inconsistency in sentencing,
26 because prosecutors can shape sentencings by their charging
27 decisions. (Ex. 8-B).

28 SENTENCING MEMORANDUM FOR - PAGE 4
JEFFREY W. DEAN
S158L

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1 An analysis of King County fraud cases, contained in Exhibit
2 10, supports Judge Dwyer's observations. (The cases analyzed in
3 Exhibit 10 were selected by defense counsel from reports
4 provided by the Sentencing Guidelines Commission regarding
5 exceptional sentences imposed for major economic crimes.) For
6 example, in State v. Bick, the defendant stole \$5,000,000 from
7 at least 40 victims. (Ex. 10-A). In State v. Griggs, the
8 defendant stole over \$900,000 from 22 victims, and had prior
9 theft convictions. (Ex. 10-C). In State v. Schultz, the
10 defendant stole over \$148,000 from 2 victims, and had prior
11 convictions. (Ex. 10-E). The standard range for Bick, Griggs
12 and Schultz was 43-57 months. Yet in State v. Batholomeaux,
13 where the defendant stole \$47,000 from 1 victim, and had no
14 prior convictions, the standard range was also 43-57 months.

15 This kind of inconsistency in setting the standard range
16 might be tolerable if the prosecution made consistent sentence
17 recommendations. However, the recommendations of the King
18 County Prosecutor's Office Fraud Division are often freewheeling
19 and arbitrary.

20 For example, in State v. Bick, Don Bick stole 5 million
21 dollars. There were at least 40 victims. Bick was found guilty
22 after a trial. Bick had not paid any restitution to the victims
23 as of the sentencing. The prosecutor's recommendation was for
24 75 months in prison. (Ex. 10-A).

1 In Jeff Dean's case, the prosecutor's recommendation is for
2 72 months in prison. Yet, Mr. Dean's case is nothing like Mr.
3 Bick's. Bick stole \$5,000,000; Dean allegedly stole \$465,000.
4 Bick had 40 victims; Dean had 1. Bick went to trial; Dean pled
5 guilty. Bick had paid no restitution; Dean has paid back about
6 half of the amount he took.

7 It is ridiculous for the prosecution to recommend
8 essentially the same sentence for Jeff Dean that was recommended
9 in the Bick case. The court should remedy this attempted
10 injustice by rejecting the prosecution's recommendation. As can
11 be seen from analyzing exhibit 10, King County judges regularly
12 impose sentences in fraud cases that are well below the
13 prosecutor's recommendation. (Ex. 10).

14 The defense recommends adoption of either of the following
15 sentencing options:

16 (1) First Offender Waiver, one month confinement on each
17 count; each count to run consecutively to the other counts
18 (total confinement: 23 months); confinement to be served in home
19 detention; or

20 (2) Exceptional Sentence of 23 months confinement in home
21 detention; each count to run concurrently with the other counts.

22 FIRST-OFFENDER OPTION

23 Under RCW 9.94A.030, a "first-time offender" is defined as
24 an individual convicted of a non-violent felony who has no prior
25 felony convictions. The fact of multiple simultaneous
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1 convictions does not affect one's eligibility for a
2 first-offender sentence. State v. Welty, 44 Wn.App. 281, 726
3 P.2d 472 (1986). Jeff Dean qualifies as a "first-time offender."

4 Once a person qualifies for first time offender status, the
5 court has total discretion to use the first time offender
6 option. The Sentencing Reform Act is silent as to the basis on
7 which the decision to use the first time offender option is to
8 be made. The sentencing judge is given no guidelines to
9 determine the use of the option, and is not obliged to state
10 reasons or make findings to justify the selection. Nor is
11 appellate review available to review a first offender sentence,
12 as would be the case were this court to find that Dean's case
13 warranted an exceptional sentence, either one shorter or longer
14 than the standard range. Exceptional sentences, in contrast to
15 the use of the first time offender option, require reasons
16 articulated in written findings and conclusions that describe
17 the substantial and compelling reasons which justify an
18 exceptional sentence.

19 Professor Boerner surmises that the reason for the rule
20 relating to first time offenders is the recognition of the need
21 for a judge who is sentencing a first time offender to have the
22 discretion to fashion a sentence similar to that which was
23 available under prior law, which permitted probation. See
24 Boerner, Sentencing in Washington, Sec. 7.6, pages 7-7 and 7-8.

1 Under the first offender option, a first sentence for Mr.
2 Dean could included:

- 3 1. Up to 90 days in confinement.
4 2. The requirement that the defendant refrain from
5 committing new offenses.
6 3. Up to two years of community supervision which can
7 include requirements that Dean perform:

8 (a) A specific employment or occupation.

9 (b) Remain within prescribed geographical boundaries
10 and notify the probation officer or the court of any change in
11 address or occupation.

12 (c) Report as directed to the court or to a probation
13 officer.

14 (d) Pay a fine, make restitution or accomplish
15 community service work.

16 Defense counsel is mirdful that the first-offender range of
17 0-90 days is inadequate punishment in this case. Therefore, the
18 defense recommends a sentence of 30 days confinement for each
19 count, with each count to run consecutive to the other. With
20 this sentence, the defendant would serve 23 months confinement.
21 This would be a just sentence in light of both the seriousness
22 of the crimes, and the substantial restitution already paid by
23 Mr. Dean.

24 Under the SRA, concurrent sentences are ordinarily required,
25 and generally speaking, consecutive sentences require an
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1 exceptional sentence. See RCW 9.94A.400. However, consecutive
2 sentences may be imposed in a first-offender case without the
3 necessity of an exceptional sentence. The
4 concurrent/consecutive sentence provision, RCW 9.94A.400, "does
5 not apply to the first-time offenders sentenced under RCW
6 9.94A.120(5)." Comment, Sentencing Guidelines Commission
7 Implementation Manual, at II-54 (1989).

8 Even if the consecutive sentences proposed by the defense do
9 require an exceptional sentence, substantial and compelling
10 reasons for such an exceptional sentence exist based on the
11 following factors:

12 (2) Aggravating Circumstances

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14 (c) The current offense was a major economic offense or
15 series of offenses, so identified by a consideration of
16 any of the following factors:

17 (i) The current offense involved multiple victims or
18 multiple incidents per victim;

19 (ii) The current offense involved attempted or actual
20 monetary loss substantially greater than typical for
the offense;

21 (iii) The current offense involved a high degree of
22 sophistication or planning or occurred over a lengthy
period of time;

23 (iv) The defendant used his or her position of trust,
24 confidence, or fiduciary responsibility to facilitate
the commission of the current offense.

1 On March 11, 1988, Barry Wolf, John Ebel, Gerald
2 Ainsworth and Robert Smith, all of CCG, went to the DRA office to
3 discuss the unauthorized checks with Jeff Dean and Michael Redman.
4 Dean admitted that he had converted these funds by stealing blank
5 checks from CCG's offices, drafting those checks to the order of
6 Dean Redman & Associates, depositing those checks into DRA's
7 account or into a joint bank account in his and Redman's names,
8 and using the funds for his own purposes.

9 Although Mike Redman knew Jeff Dean was running large
10 sums of money through their bank accounts, Dean told Redman these
11 funds had legitimate sources, and Redman believed that.

12 Dean used a large amount of the stolen money (at least
13 \$185,00) to pay for the construction of a large home he was having
14 built in Carnation, Washington. Dean used at least \$44,000 of the
15 stolen money for payments to Deborah Dean (previously Deborah
16 Pederson) and used additional stolen money for payments to, or for
17 the benefit of, his two former wives, his two children, personal
18 vacations, personal automobile expenses, and other personal
19 expenses.

20 Under penalty of perjury under the laws of the State of
21 Washington, I certify that the foregoing is true and correct.
22 Signed and dated by me this 19th day of July, 1989, at Seattle,
23 Washington.

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25 LYNN S. RONHUBER

26 Certification for Determination of Probable Cause - 3
EB#8

NORM MALENG
Prosecuting Attorney
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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON FOR KING COUNTY

STATE OF WASHINGTON,

Plaintiff,

v.

Jeffrey W. Dean,

Defendant.

CLERK
SEATTLE, WA

NO. 89-1-04034-1

STATEMENT OF DEFENDANT ON PLEA
OF GUILTY
(Felony)

1. My true name is Jeffrey W. Dean.

2. My date of birth is 12/08/43.

3. I went through the 16th grade in school.

4. I have been informed and fully understand that I have the right to representation by a lawyer and that if I cannot afford to pay for a lawyer, one will be provided at no expense to me. My lawyer's name is Ken Scearce.

5. I have been informed and fully understand that I am charged with the crime(s) of Theft in the First Degree
(23 counts)

that the elements of the crime(s) are: see the attached amended information (Appendix A)

and that the maximum sentence(s) for which ~~am~~ (are):

10 years and \$ 20,000
plus restitution, & fine(s).
(each count)

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In addition, I understand that I may have to pay restitution for crime(s) to which I enter a guilty plea and for any other uncharged crime(s) for which I have agreed to pay restitution. The standard sentence range for the crime(s) is at least 43 months and no more than 57 months

based upon my criminal history which I understand the Prosecutor says to be: No criminal history - see attached criminal history sheet

(✓) Criminal history attached as Appendix B and incorporated by reference.

I have been given a copy of the information.

(✓) And I further understand that as a First Time Offender, the court may decide not to impose the standard sentence range, and then the court may sentence me to up to 90 days of total confinement and two years of community supervision. (If First Offender provision is not applicable, this statement shall be stricken and initialed by the defendant and the judge).

6. I have been informed and fully understand that:

(a) I have the right to a speedy and public trial by an impartial jury in the county where the crime is alleged to have been committed.