

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION

_____)	
UNITED STATES OF AMERICA,)	
)	
vs.)	5:18-CR-326-1-D
)	
DANIEL TUDEUSZ ROMANOWSKI,)	
)	
Defendant.)	
_____)	

FEBRUARY 19, 2019
SENTENCING HEARING
BEFORE THE HONORABLE JAMES C. DEVER, III
UNITED STATES DISTRICT JUDGE

APPEARANCES:

On behalf of the Government:

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On behalf of the Defendant:

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1 (Tuesday, February 19, 2019, commencing at 8:58 a.m.)

2 (Call of Court to order.)

3 THE COURT: Good morning. Welcome to the United
4 States District Court for the Eastern District of North
5 Carolina. We'll take up the sentencing of Daniel Romanowski.

6 Good morning, Mr. Gordon.

7 MR. GORDON: Good morning, Your Honor.

8 THE COURT: Is the defense ready?

9 MR. GORDON: We are, Your Honor.

10 THE COURT: Good morning, Mr. Kielmanovich. Is the
11 Government ready?

12 MR. KIELMANOVICH: Yes, Your Honor.

13 THE COURT: At this time I'll ask that Mr. Romanowski
14 be sworn or affirmed.

15 (The Defendant, Daniel Romanowski, was sworn.)

16 THE COURT: Mr. Romanowski, do you understand that
17 having been sworn, that your answers to my questions are
18 subject to the penalty of perjury, and if you were to lie to me
19 you could be prosecuted for perjury or for making a false
20 statement?

21 THE DEFENDANT: I do.

22 THE COURT: Have you taken any kind of medicine or
23 any other substance in the last 48 hours that would affect your
24 ability to hear and understand this proceeding?

25 THE DEFENDANT: I'm -- I'm diabetic.

1 THE COURT: But you take medicine for your diabetes?

2 THE DEFENDANT: Yeah, I took insulin.

3 THE COURT: Does that affect your ability to hear and
4 understand me?

5 THE DEFENDANT: No.

6 THE COURT: Do you know why you're here today?

7 THE DEFENDANT: Yes.

8 THE COURT: Mr. Gordon, do you have any reason to
9 doubt Mr. Romanowski's competence to go forward today?

10 MR. GORDON: No, Your Honor.

11 THE COURT: Does the Government doubt
12 Mr. Romanowski's competence to go forward today?

13 MR. KIELMANOVICH: No, Your Honor.

14 THE COURT: Based on Mr. Romanowski's answers to my
15 questions, my observations of Mr. Romanowski, and the answers
16 from counsel, I find that he is competent.

17 Sir, you're here today having entered a plea of
18 guilty to a charge of voting by an alien in violation of 18
19 U.S.C. Section 611(a). The probation office prepared a
20 presentence report, calculated a Total Offense Level of 4,
21 Criminal History Category 1, and calculated the Guideline Range
22 of 0 to 6 months.

23 Have you spoken with your counsel Mr. Gordon about
24 that presentence report?

25 THE DEFENDANT: Yes.

1 THE COURT: And the report indicates there are no
2 objections to the report from either you or the Government.
3 Mr. Gordon, is it still the case no objections to the report
4 from the defense?

5 MR. GORDON: No objections, Your Honor.

6 THE COURT: Is that correct, Mr. Kielmanovich?

7 MR. KIELMANOVICH: That's correct, Your Honor.

8 THE COURT: The Advisory Guideline Range is 0 to 6
9 months. Does the Government object to that Advisory Guideline
10 Range?

11 MR. KIELMANOVICH: No, Your Honor.

12 THE COURT: Does the defense object to that Advisory
13 Guideline Range?

14 MR. GORDON: No, Your Honor.

15 THE COURT: I do accept the Advisory Guideline Range.
16 Pursuant to Rule 32, I adopt the facts set forth in the
17 presentence report as correct. I'll hear from Mr. Gordon, then
18 I'll hear from Mr. Romanowski, and then I'll hear from
19 Mr. Kielmanovich.

20 Mr. Gordon.

21 MR. GORDON: Thank you, Your Honor.

22 Your Honor, as noted, we have no objections to the
23 presentence report. The thing that I would like the Court to
24 know is, as I'm sure the Court is already familiar, but that
25 the offense to which he's pled guilty is in a way a strict

1 liability offense. What the Government must show is, number
2 one, that you're not a citizen; number two, that you voted.

3 And I think what happened with Mr. Romanowski was a
4 mistake. It was not an intent. There was no intent on his
5 part to fraudulently vote. He went with his partner at the
6 time to apply -- she was applying for food stamps. And as I
7 understand it, pursuant to the -- I think the Motor Voter law
8 or something similar, they were both asked in the process of
9 doing that, "Do you want to register to vote?" He said that he
10 was a legal permanent resident and he said, "Can I sign up?
11 I'm a legal permanent resident."

12 And the person said, "I'm not sure. I can sign you
13 up."

14 So the form was filled out. Mr. Romanowski did not
15 check the box saying that he was a citizen. He left that box
16 blank. He did sign the form, though, and at the bottom of the
17 form it does say something to the effect of "in accordance with
18 -- as attested to above, I certify that I'm qualified to vote"
19 or something like that.

20 I think the lesson -- and we have talked a lot about
21 it -- is that he should have been more careful with this. But
22 in terms of a fraudulent intent, he simply did not have it.
23 But he did violate the law, and he has pled guilty to that.

24 He's a very hard worker. His employer, Mr. Light,
25 has come here today to support him. And I have been to

1 Mr. Romanowski's residence several times. He lives simply. He
2 works hard. He has potential consequences with his immigration
3 status as a result of this, which I think had he -- it's not
4 something he ever deliberately would have put at risk for this.
5 So the consequences already have been significant for him,
6 potentially are more significant for him.

7 So I would ask the Court's indulgence to the extent
8 the Court is so inclined to let him put this aspect of the case
9 behind him and continue on and deal with whatever may be down
10 the road immigration-wise.

11 And that's -- I thank the Court for listening.

12 THE COURT: Thank you. At this time I'll hear from
13 Mr. Romanowski, if you'd like to make a statement, sir. Would
14 you like to say anything?

15 THE DEFENDANT: I just did a big mistake. I didn't
16 know that I should look at it more into it, that I shouldn't
17 vote. And --

18 THE COURT: That you should have what?

19 THE DEFENDANT: That I shouldn't -- I should not
20 vote. I should look through it more. And I'm sorry. I didn't
21 know about it.

22 THE COURT: Thank you. Mr. Kielmanovich.

23 MR. KIELMANOVICH: Your Honor, this is a very serious
24 offense to the extent the Defendant's vote has been counted and
25 it has helped to dilute the right of the citizens to vote and

1 to have their voice counted because people like the Defendant
2 have been voting. And I believe the Court will hear the next
3 case, another sentencing in which similar criminal conduct
4 occurred. Other judges in this district have already seen some
5 of these cases, and we have others coming down as well.

6 Your Honor, it's a basic right of citizenship, the
7 right to vote. I believe that that's the case in most of the
8 world. The Defendant should have known that he was not
9 entitled to vote in the general elections like he did. I mean,
10 he didn't only do it once. He did it twice. 2012 and 2016.
11 The Defendant -- he was given local permanent resident status
12 in 2004. He didn't apply for citizenship. He didn't qualify
13 for citizenship by derivation.

14 And the form that the Defendant signed, although the
15 box -- question number one says, "Are you a citizen of the
16 United States? Yes or no. If your answer is no, do not
17 continue completing this form."

18 But nonetheless, even if he left it blank, next to
19 the signature there's another attestation that says, "I'm a
20 citizen of the United States," and the Defendant signed that as
21 well.

22 I think we have seen an effort by the defense to try
23 to minimize the liability of defendants in this situation by
24 claiming that they have been registered by the board, which
25 that's a problem on its own. It's inconceivable that there are

1 people like -- in this status that are being registered when
2 they produce no evidence of citizenship. And in some cases
3 they have shown a green card, which is actually evidence of
4 noncitizenship because they're here as immigrants and they
5 still have been registered. So that's a problem on its own.
6 But nonetheless, I argue to the Court that that does not
7 minimize the liability of this Defendant in terms of his
8 actions in this case.

9 So also it's very common to see, when one goes to
10 vote, signs that say "Are you a citizen of the United States?"
11 I mean, if you become a citizen, it's because you went through
12 the application process. There's a background check. There's
13 a citizenship interview. There's a test that has to be passed
14 to get citizenship, and there's an oath and ceremony. So for
15 somebody to claim that he or she believed to be a U.S. citizen
16 just either by being here many years or by sending an
17 application is good enough -- now, I'm talking in disrespect a
18 little bit generally, because the Defendant did not make the
19 claim as understanding that he believed that he was a U.S.
20 citizen. The point is that as a lawful permanent resident, he
21 knew or should have known that he was not entitled to vote, and
22 he voted in two general elections. To this date, his vote has
23 been counted, and that is outrageous, I submit to the Court.

24 Your Honor, we're asking, pursuant to the terms of
25 the plea agreement -- he did sign one. There's some appeal

1 waivers, and he told the Government early on that he wanted to
2 dispose the case in that manner. Pursuant to those terms,
3 we're recommending probation in this case. We would ask for 12
4 months' probation, a fine to reflect the seriousness of the
5 offense, and that would be our request, Your Honor.

6 Thank you.

7 THE COURT: All right. Anything else, Mr. Gordon?

8 MR. GORDON: Just -- just briefly, Your Honor, yes.

9 And by no means does Mr. Romanowski want to minimize
10 the seriousness of the crime to which he has pled guilty. I
11 mean, he acknowledges that he voted when he should not have
12 voted. The point that we are simply trying to make to the
13 Court is that it fell more in the nature of a mistake,
14 carelessness about the law, than a willful attempt to commit
15 voting fraud. That was not what he was trying to do. That,
16 you know, he was asked if he wanted to register. As
17 Mr. Kielmanovich said, we are seeing in other cases that there
18 has been a problem with people signing up and, for whatever
19 reason, the State not catching the fact that they were not
20 entitled to vote. So when he went to vote and he was permitted
21 to vote, I think the message he got was that he was allowed to
22 or that it was permissible.

23 You know, the word is now out as a result of these
24 cases. People know about it. He is never going to do it
25 again. And I think other people are getting the word, too,

1 that if they're not citizens, you know, they may not vote.

2 THE COURT: How would you think you can vote if
3 you're not a citizen?

4 MR. GORDON: I'm sorry, Your Honor?

5 THE COURT: I don't know how anyone could think they
6 can vote if there weren't a citizen.

7 MR. GORDON: Well --

8 THE COURT: Honestly, I just don't see how any human
9 being -- I mean, if you go to some other country and you're not
10 a citizen and you go to vote, it just is so crazy how anyone
11 who's not a citizen think they can vote in a national election.
12 I just don't understand it.

13 MR. GORDON: Well, and I'm probably not communicating
14 the point I'm trying to make very well, but simply that the
15 total -- the totality of the circumstances here with going to
16 register for food stamps or for his girlfriend to register for
17 food stamps and being asked if he wanted to sign up and being
18 given the form and the person there saying that she wasn't sure
19 if it mattered that he was a permanent resident or not.

20 I agree that it was careless. It was careless. But
21 it was not a willful attempt to be deceitful is the point I'm
22 trying to make, and I'm probably not making it well, Your
23 Honor, but that's -- you know, I've been with this case a long
24 time, and I truly believe that's what was in his heart. So.

25 THE COURT: Thank you.

1 MR. GORDON: Thank you, Your Honor.

2 THE COURT: All right, Mr. Romanowski. The Court
3 recognizes its obligation to impose a sentence sufficient, but
4 not greater than necessary, to comply with the purposes set
5 forth in the statute.

6 I have considered all the arguments your lawyer's
7 made. I have considered your statement, sir. I have
8 considered the position of the United States. I have
9 considered the Advisory Guideline Range.

10 Among other things, I'm to consider the nature and
11 circumstances of the offense and the history and
12 characteristics of the Defendant, the need for the sentence
13 imposed to reflect the seriousness of the offense, to promote
14 respect for the law and to provide just punishment, the need
15 for the sentence imposed to deter others who might choose to
16 engage in the criminal behavior that brings you here, the need
17 for the sentence imposed to protect the public from further
18 crime by you, the need for the sentence imposed to provide you
19 with needed educational or vocational training, medical care,
20 and correctional treatment in the most effective manner.

21 The statute lists numerous other factors. I have
22 considered all those factors, although I won't mention each one
23 individually.

24 As for the nature and circumstance of the offense,
25 you did plead guilty to voting as an alien in violation of

1 U.S.C. Section 611(a).

2 It is a serious offense. Citizens are entitled to
3 vote. It's, as the Supreme Court said, a fundamental political
4 right 'cause it's preservative of all rights, the most
5 fundamental significance within our constitutional structure.
6 And it's a right that citizens have and that noncitizens don't
7 have.

8 This grand experiment began under the Constitution in
9 this country more than 200 years ago. Part of that experiment
10 is that the citizens have a voice in the governance of the
11 nation that noncitizens don't. And it's -- I understand
12 Mr. Gordon. I understand what he was saying, and certainly
13 it's incredible to me that anybody who is paid to help people
14 sign up or whatever, see a green card or somebody leaves that
15 blank and they let them -- they say, "I don't know," I mean,
16 that's -- that person is not a good citizen.

17 But at the end of the day, to vote when you're not
18 entitled to vote does dilute the votes of those who voted, and
19 you did it twice. And you shouldn't have done it. It's
20 serious.

21 As for your history and characteristics, you're 39
22 years old. You have a green card. You've been here since two
23 thousand -- with your green card since 2004. You've been here
24 longer than that, I gather. You do have an employment record.
25 You have had some issues with the law, but not anything that

1 gets you into a Criminal History Category beyond 1.

2 I do think general deterrence is important. I think
3 people need to know that there's consequences for this. And
4 it's just such a clear principle. I honestly don't know how
5 the notion of anyone -- me traveling to some other country
6 thinking, "Well, I'll go vote in their election." It just is
7 preposterous. And no matter how long I might stay or visit,
8 the notion that I would travel to England and vote or travel to
9 Poland and vote, travel to Mexico and vote, I mean, it just is
10 crazy. And so it does need to be deterred.

11 Having fully considered the entire record in the
12 case, it's the judgment of the Court the Defendant, Daniel
13 Romanowski, is placed on probation for one year.

14 I'm going to fine you \$1200. You have to pay \$100 a
15 month every month on probation as a reminder of the wrong that
16 you committed. This is not some seatbelt violation situation,
17 mind you. It's a serious crime. It should be prosecuted. It
18 dilutes the votes of citizens.

19 And also -- in the first two months of your
20 probation, you're going to be on house arrest. You'll be
21 allowed to go to your job, to the doctors, to religious
22 services, and otherwise preapproved by probation. Standard
23 conditions of his arrest.

24 But I also think that's, again, a reminder, a
25 limitation on your liberty because you voted in two elections

1 that you were not allowed to vote in and thereby diluted the
2 votes of citizens. And there have been more than one election
3 in this country that have been decided literally by one vote.
4 There are some votes that are decided, believe it or not, if
5 there's a tie, and there are coins that are flipped. So each
6 vote matters, and you shouldn't have done it. So that, again,
7 will be a reminder of what I consider to be the seriousness of
8 the offense, and balancing that with the need for just
9 punishment.

10 So you also owe a special assessment of \$25.

11 I do think I've properly calculated the Advisory
12 Guideline Range, but I announce pursuant to *U.S. v. Gomez-*
13 *Jimenez*, 750 F.3d 370 (4th Cir. 2014), that I'd impose the same
14 sentence as an alternative variant sentence if I have in any
15 way miscalculated the Advisory Guideline Range. And this is
16 the sentence that is sufficient but not greater than necessary
17 for Mr. Romanowski.

18 You can appeal your conviction if you believe your
19 guilty plea was somehow unlawful or involuntary or if there's
20 some other fundamental defect in the proceeding that was not
21 waived by your guilty plea.

22 You also have a statutory right to appeal your
23 sentence under certain circumstances, particularly if you think
24 your sentence is contrary to law. However, you did enter into
25 a plea agreement that contains an appellate waiver.

1 In light of your sentence, I believe you've waived
2 your right to appeal your sentence. If you believe the waiver
3 is unenforceable or inapplicable for any reason, you can
4 present that theory to the Appellate Court.

5 With few exceptions, any Notice of Appeal must be
6 filed within 14 days of the judgment being entered on the
7 docket in your case. If you're unable to pay the cost of an
8 appeal, you may apply for leave to appeal *in forma pauperis*.

9 If you so request, the Clerk of Court will prepare
10 and file a Notice of Appeal on your behalf.

11 Mr. Gordon, is there anything else today we need to
12 do?

13 MR. GORDON: Your Honor did say a \$1200 fine to be
14 paid --

15 THE COURT: Correct. \$100 --

16 MR. GORDON: -- monthly? Thank you.

17 THE COURT: -- during the period of 12 months of
18 probation. That's just going to be a monthly reminder.

19 MR. GORDON: Correct.

20 THE COURT: You have a job and -- but that's going to
21 be a monthly reminder because you shouldn't have done this.
22 And every month that's going to remind you. So you're going to
23 have to make sure you save that basically \$25 a week so that at
24 the end of the month you can pay that hundred dollars each
25 month during the time you're on probation.

1 THE DEFENDANT: Okay.

2 THE COURT: And you'll need to speak with the
3 probation officer before you leave.

4 THE DEFENDANT: Okay.

5 THE COURT: Anything else, Mr. Kielmanovich?

6 MR. KIELMANOVICH: No, thank you, Your Honor.

7 THE COURT: I thank counsel for their work here
8 today. That will conclude the matter involving Mr. Romanowski.

9 MR. GORDON: Thank you, Your Honor.

10 THE COURT: There won't be any electronic monitoring.

11 MR. GORDON: I'm sorry, Your Honor?

12 THE COURT: I said there won't be any electronic
13 monitoring.

14 MR. GORDON: Oh. Thank you, Your Honor.

15 (Proceedings concluded at 9:19 a.m.)

16

17 (END OF TRANSCRIPT.)

18

NORTH CAROLINA

CHATHAM COUNTY

CERTIFICATION OF REPORTER

I, Wanda B. Constantino, CVR-CM-M, contract court reporter for the United States District Court for the Eastern District of North Carolina, do hereby certify that pursuant to Section 753, Title 28, United States Code, that the forgoing is a true and correct transcript of the proceedings held in the above-entitled matter;

That the proceedings were reported by me using the voice-

writing (Stenomask) method; and

That the transcript page format is in conformance with the regulations of the Judicial Conference of the United States.

Dated this 23rd day of February, 2019.

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Contract Court Reporter