

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

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BEFORE THE HONORABLE WILLIAM B. SHUBB, JUDGE

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UNITED STATES OF AMERICA,

Plaintiff,

vs.

No. CR. S-03-363

ANTONIO STARKS,

Defendant.

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REPORTER'S TRANSCRIPT

JUDGMENT AND SENTENCE

WEDNESDAY, MARCH 23, 2005

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Reported by: KELLY O'HALLORAN, CSR #6660

APPEARANCES

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For the Defendant:

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SACRAMENTO, CALIFORNIA

WEDNESDAY, MARCH 23, 2005, 9:00 A.M.

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4 THE CLERK: Calling criminal case 03-363; United
5 States versus Antonio Starks. This is on for status
6 regarding judgment and sentencing, your Honor.

7 THE COURT: Why don't you have Mr. Starks take a seat
8 for now, because we may spend a little time here.

9 MS. PINGS: Good morning, your Honor. Anne Pings for
10 the United States.

11 MS. RUSK: Good morning, your Honor. Shari Rusk on
12 behalf of Antonio Starks who is present in custody.

13 THE COURT: When this matter came before the Court for
14 sentencing, Ms. Rusk made a request for a departure or, in
15 the alternative, for the Court, pursuant to Booker, to
16 deviate from the sentencing guidelines and to take into
17 account the disparity between the guidelines as they pertain
18 to powder cocaine and the guidelines as they pertain to crack
19 cocaine. The Court indicated that it considered this to be a
20 serious motion and afforded the government the opportunity to
21 respond. The government has now filed its memorandum
22 regarding the applicability of the sentencing guidelines
23 pertaining to cocaine base, and the defendant has filed a
24 reply to that sentencing memorandum.

25 I have read what you have submitted. What I have not

3 Court.

4 I was hopeful of getting a little more background from
5 the government as to the reasons for these disparities. The
6 first part of the government's memorandum seems to amount to
7 a lecture on why judges should be faithful to the guidelines,
8 and the second part of it is pretty much a summary of the
9 findings from the legislative history as to the reasons for
10 punishing crimes involving crack cocaine more harshly than
11 powder cocaine.

12 All of the discussion about it seems to be on the side
13 of the defendant. Nobody talks about this as if it makes
14 sense. They just talk about it as if it's just there, and
15 Congress has done it, and so it must be right. But all of
16 the discussion favors the defense argument.

17 I read this Wisconsin case carefully. I can't even
18 find it now. United States vs. Smith. Judge Adelman has a
19 very well-reasoned discussion supporting his conclusion to
20 sentence the equivalent of a ratio of 20 to 1 rather than a
21 ratio of 100 to 1.

22 I haven't seen anything from any court setting forth
23 any reasons why the Court should follow the guidelines,
24 except that they are the guidelines, they are the guidelines,
25 they are the guidelines. I know, I know. But I haven't seen

3 to give me a sermon about how I should honor the guidelines?

4 MS. PINGS: Well, your Honor, in our brief, I set
5 forth 15 reasons why there's a difference between the crack
6 guidelines and the powder guidelines. And those were
7 directly from the legislative history and from some materials
8 from dissenters of the Guidelines Commission.

9 I can understand why the Court would say that there
10 seems to be more things that say the guidelines are bad. And
11 perhaps if I had attached the legislative history and
12 attached other items, there would be an equal number of
13 things to say that crack is worse than powder. But these
14 reasons are in summary fashion for the Court's convenience.
15 But the legislative history that we cited to has the source
16 materials in it. The legislative body took testimony from
17 experts in the field. And I believe the opinion attached
18 from the District Court in Wisconsin is very conclusory. And
19 the statement -- the judge in that opinion states things
20 like, well, everyone seems to agree they're bad. Well,
21 that's just absolutely not correct. The Congress, for
22 example, does not agree.

23 THE COURT: That's not for example. That's the only
24 thing. That's the only thing you have going in your favor,
25 is that Congress just, for no reason that they expressed,

3 a very good discussion that came out right after Booker, and
4 it still makes a lot of sense even though we've had a lot of
5 time to think about these things since then, the court said
6 the guidelines represent the product of an expert commission
7 which has studied the sentencing process at great length.

8 Well, what the Sentencing Commission has recommended
9 is something totally different than the guidelines. So if we
10 want to defer to the Sentencing Commission rather than
11 Congress, as the court suggests in Wilson, then the
12 guidelines are not the best indication of what the Sentencing
13 Commission in its wisdom with all of its expertise has
14 suggested. The court in Wilson says the commission spent
15 years studying -- no, you say that. But the dissent that you
16 cited still agrees that the disparity between crack and
17 powder cocaine is unfair. Even the dissent in the
18 commission. So who is it? Who is it that says that the 100
19 to 1 ratio is fair, reasonable, or should be followed other
20 than Congress which doesn't give us any reasons?

21 What are the reasons?

22 MS. PINGS: The reasons, your Honor, are in the
23 legislative history which was cited. And I will point out
24 with respect to the Wilson case from Utah, in that opinion
25 the judge was very clear about that the resulting guidelines

3 approved the guidelines or acted to adjust them with
4 congressional preference. The Wilson opinion and the
5 guidelines as an end product are a result of the Congress and
6 the Guidelines Commission.

7 THE COURT: So when would the Court ever be justified
8 in not following the guidelines?

9 MS. PINGS: Your Honor, the government's position is
10 that the concept from the guideline scheme of exceptional
11 circumstances or some sort of individualized reason that the
12 guidelines are not appropriate, to borrow the old language of
13 outside the heartland --

14 THE COURT: Right. So in other words, you're going to
15 borrow the language from the guidelines, so the only time
16 that the Court, in your judgment or according to your
17 position, should ever deviate from the guidelines is when a
18 departure would be authorized under the old guidelines;
19 right?

20 MS. PINGS: To phrase it differently, your Honor, even
21 if we don't use that language from the guidelines, it should
22 be an individualized reason that has to do with the defendant
23 and the case that's before the court at the time. It should
24 not be a blanket reason that the guidelines are wrong. It
25 should be a case-by-case basis depending on the facts of the

3 does not agree with the guidelines.

4 THE COURT: Well, there's something to be said for
5 that, Ms. Rusk. That would be an approach to take. That the
6 Court should not either blindly follow the guidelines or
7 blindly ignore the guidelines. That the Court ought to, if
8 it does depart from the guidelines or deviate from the
9 guidelines, do it on a case-by-case basis, not just because
10 the Court disagrees with the guidelines.

11 MS. RUSK: I agree with that completely, your Honor.
12 I think it's true that you do a departure on a case-by-case
13 basis. The issue here is a unique issue because the United
14 States Sentencing Commission, not that long after the 100 to
15 1 crack-powder disparity was enacted in the guidelines, took
16 testimony and evidence, looked at it scientifically and
17 sociologically and decided that the 100 to 1 was wrong. They
18 initially voted 1 to 1. That was rejected by Congress in
19 what was being called sound byte politics. The politicians
20 might look soft on crack but didn't look at the issue.

21 And the dissenting commissioner's vote which the
22 government attached, Judge Tacha's vote, again says that the
23 100 to 1 is unfair. They were suggesting a 20 to 1. That if
24 there are any differences at all in crack and powder, you
25 could make the penalties stiffer, but 100 to 1 has no reason

3 repeatedly tried to get the penalties reduced. And the
4 government in many cases around the country has been saying,
5 well, it's unfair, but it's the guidelines. And then Booker
6 comes down, and now judges are saying, well, we're not bound
7 by that. We have to look at the reasonableness of this
8 particular guideline provision.

9 In addition to Smith, I found a case this morning
10 which I can copy for the government and the Court and pass it
11 up, but it's by Judge Sifton from the Eastern District of New
12 York. Exact same issue. It does cite Smith. It cites the
13 fact that the commission unanimously declared the 100 to 1
14 ratio unjustified, similar to Smith. It goes through a
15 similar analysis that the death of Len Bias, which was
16 believed to be from crack cocaine, led to this screaming
17 headline about crack babies and a very quick bill passed, and
18 the guidelines did follow Congress at the time, but after a
19 reasoned analysis, they saw that it was low-level street
20 dealers, predominately minorities, who were being penalized
21 far more severely than large-scale traffickers. And so the
22 commission itself, I mean there was no defense body present,
23 it was United States sentencing commissioners who voted to
24 reduce it. And when the 1 to 1 didn't work, they continued
25 with 20 to 1, 5 to 1, 10 to 1. This particular court, Judge

3 post-Booker case anywhere that is applying the 100 to 1
4 ratio.

5 THE COURT: Ms. Pings, in your brief, you say that any
6 deviation from the guidelines should be subject to appellate
7 scrutiny. Have there been appeals taken on either of these
8 two cases where the judges have done this?

9 MS. PINGS: Your Honor, my understanding is these are
10 both very recent, and I don't have that information. I would
11 just like to point out to the Court, though, that of the four
12 cases cited by Ms. Rusk in her brief at page 5 suggesting
13 that circuit courts were sending cases back on a crack versus
14 powder issue, I've reviewed all those cases, and none of them
15 appear to be about crack versus powder. They all appear to
16 be about nonjury fact finding to increase the sentence. They
17 happened to be crack cases, but I did not find any discussion
18 in there of disparity for crack versus powder.

19 With respect to the case Ms. Rusk just mentioned, I'm
20 not familiar with it. And with respect to the case she
21 attached to her brief, I don't know the department's position
22 on that.

23 THE COURT: Well, you're the one that said that it
24 would be subject to appellate scrutiny, so I thought that was
25 some sort of threat to appeal if I departed or a statement

1 that you are appealing if others depart.

2 MS. PINGS: It's my understanding from the Department
3 of Justice that, similar to what I discussed before, the idea
4 that a non-individualized sentence that's based simply on a
5 disagreement with the philosophy of the guidelines would be
6 the type of sentence that would be most likely to be
7 reviewed, or appealed I guess.

8 THE COURT: Well, that's what the Smith sentence was.
9 What you've said here is that because the sentence within the
10 guideline range is presumptively reasonable and accommodates
11 the congressional purpose affirmed by the Supreme Court in
12 Booker in obtaining fair and uniform sentences, the
13 government anticipates that sentences outside the guideline
14 range will be subject to appellate scrutiny.

15 So I just would like to know if I'm going to be the
16 only one you appeal or if you've got an appeal pending on the
17 Smith case and this other one.

18 MS. PINGS: Well, your Honor, I don't know the answer.
19 I don't know that the decision has been made. My
20 understanding is that's an extremely recent opinion, and the
21 government has 30 days to make up its mind. It's from this
22 month.

23 THE COURT: I'm talking about Smith.

24 MS. PINGS: I understand that, your Honor. That's a
25 March 2005 opinion as well.

1 THE COURT: Is it?

2 MS. PINGS: I can try and find out the information for
3 the Court, but my guess is that maybe the decision hasn't
4 been made yet.

5 THE COURT: Maybe I better look at this other case.
6 Do you have a copy of that?

7 MS. RUSK: Yes, your Honor.

8 THE COURT: If I sentence in the guidelines, then
9 nobody can appeal basically.

10 MS. RUSK: The defense can appeal.

11 THE COURT: Within the guidelines.

12 MS. RUSK: You mean if you sentence 100 to 1?

13 THE COURT: Right. If I sentence within the
14 guidelines, what's the rule post-Booker? That he can appeal
15 a sentence within the guidelines?

16 MS. RUSK: My understanding is that he can.

17 THE COURT: All right. Then either side can appeal
18 whatever I do. I was thinking that in accordance with the
19 old law that a sentence within the guidelines wasn't
20 appealable. But since Booker --

21 MS. RUSK: I think now the sentence has to be
22 reasonable under 3553.

23 THE COURT: Well, maybe that's the thing to do then.
24 I don't know what the Ninth Circuit is going to do, and it
25 doesn't make much difference what this Court says. I just

1 don't have the time to write opinions like these other judges
2 in places like Wisconsin. And so if I sentence within the
3 guidelines, you can take an appeal.

4 MS. RUSK: Your Honor, I would just add the government
5 has talked a lot about individualized factors, and we have
6 talked about Mr. Starks' family responsibilities, his
7 daughter, his period of long time of a clean record. There
8 were numerous letters attached to our original sentencing
9 memorandum from his family. Ten years is a very stiff
10 sentence in this case. His family has been at every single
11 court appearance. His fiancée. He's got a child. The two
12 other codefendants in this case, if the Court will recall,
13 were sentenced to like 21 months and four years. One of them
14 is now out of custody. So there are numerous individual
15 reasons why his case also was out of the heartland.

16 THE COURT: Why don't I do this. I can sentence
17 within the guidelines and state that I feel that I don't have
18 authority to go outside the guidelines on the facts of this
19 case, but if I did I would follow Judge Adelman's decision in
20 the Smith case. And then if the Ninth Circuit agrees, they
21 can remand it to me and let me do that. Otherwise, the
22 sentence will stay.

23 MS. RUSK: I appreciate the fairness of that. I think
24 that would work for the defense. Of course Mr. Starks would
25 still be receiving a higher sentence.

1 THE COURT: I know. But either way, it's a ten-year
2 sentence, and the Ninth Circuit can get to it a lot sooner
3 than that.

4 MS. RUSK: Right. The Court do it the other way, too,
5 and let the government do the appeal, but I understand the
6 Court's position.

7 THE COURT: Let me state as clearly and succinctly as
8 I can my thinking and the reasons for what I'm doing.

9 There is some persuasiveness in the government's
10 suggestion that the Court should adhere to the guidelines
11 except in those cases where there is something peculiar to
12 the conduct involved or the defendant's background that calls
13 for the Court to impose a different sentence. There is
14 something to be said for that interpretation of Booker.

15 On the other hand, Judge Adelman's decision in Smith
16 is very persuasive. And apparently the decision you have
17 just handed me by Judge Sifton in the Eastern District of New
18 York is similar.

19 If called upon to make an independent determination as
20 to the reasonableness of the 100-to-1 ratio that Congress has
21 imposed based upon what has been presented to this Court, I
22 would conclude, as did Judge Adelman and Judge Sifton, that
23 the 100-to-1 ratio is not reasonable. That conclusion would
24 be based upon everything you have brought to my attention
25 from the Sentencing Commission, the commentators, and the

1 judges who have considered the issue. Therefore, if I
2 believed that it was appropriate and lawful for a judge to
3 impose outside the sentencing guidelines simply because the
4 judge felt the guidelines were unreasonable and/or that the
5 reasons given for those guidelines having been imposed by
6 Congress were themselves unreasonable, I would deviate from
7 the guidelines as did Judge Adelman and Judge Sifton.

8 So in imposing this sentence, I am accepting the
9 government's suggestion that it is not appropriate or proper
10 for the Court to deviate from the guidelines simply for those
11 reasons.

12 I urge the defendant to appeal from this sentence if
13 his attorney believes that an appeal would be fruitful and
14 useful, and the Ninth Circuit may consider whether this Court
15 would properly and lawfully be permitted to deviate from the
16 sentencing guidelines simply because it disagrees with the
17 reasonableness of those guidelines. And if the Ninth Circuit
18 concludes that this Court would have that authority, then I
19 would state at this time that I would deviate from the
20 guidelines in this case for that reason.

21 With that statement having been made, I'm prepared now
22 to proceed with sentencing.

23 Is there anything else you wanted to say in behalf of
24 the government, Ms. Pings?

25 MS. PINGS: Your Honor, I just wanted to put a few

1 things on the record, if I might. One is Ms. Rusk has
2 mentioned a disparity between the sentence of this defendant
3 and the other defendants. And I would just remind the Court
4 that those defendants were not similarly situated with this
5 defendant. They pled to different offenses. And they
6 participated in one drug deal, and this defendant
7 participated in numerous drug deals leading up to a
8 culminating event at which the other two were present. So I
9 don't believe that that's an appropriate consideration.

10 With respect to the individualized factors regarding
11 this defendant which support the guideline sentence, I would
12 just remind the Court that this defendant in the span of 10
13 years, from the age of 12 to 22, has had 12 adjudications for
14 criminal offenses. Six adult convictions, including two, if
15 not three, for prior sales of crack cocaine. The amount of
16 crack cocaine involved in this offense was worth over \$24,000
17 as is indicated in the declaration that we attached.

18 And, lastly, I just would add that I believe it is the
19 right thing to impose the guideline sentence in this case.
20 This defendant has already received the benefit of a bargain
21 in that he does not have the notice of prior conviction filed
22 so he's avoiding a 20-year mandatory minimum already by the
23 benefit of the bargain. There is nothing about this
24 defendant that is deserving of special treatment that
25 would -- it's the government's position that if the Court's

1 going to depart for this crack/powder disparity in this
2 cocaine base case, that it would be -- for the Court to be
3 logically consistent, you'd have to do that in every case in
4 the future. And we don't believe there is anything about
5 this defendant that's deserving of that extraordinary relief
6 or commitment.

7 The thing that makes this defendant have a high
8 sentence is his criminal history; his prior convictions and
9 the amount of cocaine that he was dealing with and the value
10 on the street. And this is not a defendant who this is his
11 first chance, this is his second chance, this is his third
12 chance. He's been selling crack cocaine since the age of 14.
13 This is the type of defendant that deserves the harsh
14 punishment. Not the type of defendant that deserves the
15 exception.

16 THE COURT: I will agree with some of what you just
17 said. I want it clear that I would not either depart from
18 the sentencing guidelines or deviate under Booker for any
19 individualized factors in this case. The defendant's
20 criminal background is deplorable. His conduct in this case
21 is inexcusable. He is not deserving of special treatment
22 that others engaged in the sale of crack cocaine do not get.

23 I tend to agree with you that if the departure or
24 deviation that I would contemplate is given to this
25 defendant, then except in exceptional circumstances and

1 exceptional cases, it would probably inure to the benefit of
2 most, if not all, of the other defendants in crack cocaine
3 cases.

4 The reasoning simply relates to the tremendous
5 disparity between those engaged in sale, distribution,
6 manufacture, et cetera, of crack cocaine as opposed to those
7 involved with powder cocaine. And I don't repeat everything
8 that these other courts have said, but a lot of these reasons
9 that you cite for Congress seeing fit to impose that ratio
10 can be correlated to the simple fact that powder cocaine is
11 the drug of choice among yuppies, dot-comers, and movie stars
12 in Beverly Hills, whereas crack cocaine is the drug of choice
13 in the ghetto. And that's not an individualized assessment
14 that's peculiar to Mr. Starks. So I do agree with you to
15 that extent.

16 Was there anything else you wanted to say, Ms. Rusk?

17 MS. RUSK: The only thing I want to add, your Honor,
18 that we do dispute the accuracy of some of the government's
19 rendition on the particulars in this case, but since that's
20 not at issue, we won't address that, Mr. Starks' background.

21 But I think the Court is exactly right in its
22 categorization of who uses powder cocaine and who uses crack.
23 And the Supreme Court in Booker has just told District Courts
24 the guidelines are advisory, they're not mandatory, that
25 you're not bound by them.

1 And what you have to do is see if the sentence is
2 reasonable considering the guidelines as a factor and
3 considering 3553. And both the Sifton decision and the
4 Adelman decision are directly on point post-Booker. Both
5 District Court judges did look at the legislative history,
6 they did written opinions.

7 And I think, you know, obviously we can ask the Ninth
8 Circuit, but I'm just asking the Court to consider the fact
9 that Booker has said the guidelines aren't mandatory, they're
10 advisory, and we're asking you, District Courts, to see if
11 the sentence is reasonable, including the guidelines and the
12 3553 factors.

13 And I don't think the District Courts are going to
14 call the 100 to 1 ratio reasonable. It's going to be very
15 surprising if it withstands this. It's more likely the
16 courts imposing 10 to 1 or 20 to 1 or 1 to 10. There may be
17 a new guideline enacted that's advisory, but it's not very
18 likely that 100 to 1 is going to stand. And I think that the
19 Court clearly does have authority, since the guidelines are
20 now advisory, to issue the lower sentence.

21 I appreciate the procedure the Court is adopting in
22 letting us appeal, but since I do represent Mr. Starks, I'm
23 just urging the Court to consider that Booker said the
24 guidelines were advisory, not mandatory, and the sentence is
25 not -- the 100 to 1 is not reasonable. There's other options

1 the Court has. But a ten-year sentence is a very stiff
2 sentence for this defendant.

3 THE COURT: More important than what the District
4 Courts across the country say about this will be what the
5 appellate courts say. By doing what I'm doing, I give you
6 the ability to control whether this case goes to the
7 appellate court or not. If I rule in your favor --

8 MS. RUSK: The government can appeal.

9 THE COURT: The government may or may not appeal, and
10 we may not get something from the Ninth Circuit. So you have
11 the ability to control whether this case goes to the Ninth
12 Circuit, and you have the ability to control the arguments
13 that will be made. And I trust that you will make the
14 arguments that you have here and that the Court of Appeals
15 will have a full and fair opportunity to decide this issue.

16 All right. Mr. Starks, would you come forward,
17 please, now.

18 I believe I haven't made my finding yet, but I will
19 now. The Court has considered the objections and adopts the
20 findings in the presentence report, determines them to be
21 true and correct, and, accordingly, finds that the applicable
22 offense level is 33 and the criminal history category is IV.

23 MS. RUSK: Your Honor, by agreement of the parties, we
24 have a stipulation that the two levels for the gun was not
25 appropriate.

1 THE COURT: I thought that was already taken in
2 account in the 33. It was not.

3 MS. RUSK: No. The probation office came up with the
4 original offense level, but the government -- the parties
5 have stipulated that the two levels for the gun is not
6 appropriate.

7 THE COURT: All right. I saw that. I thought I took
8 that into account in the 33. So it's 31.

9 MS. RUSK: Correct, your Honor.

10 THE COURT: The applicable offense level is 31, and
11 the criminal history category is IV. And that means that 151
12 is the bottom of the guidelines.

13 All right. Mr. Starks, is there anything you want to
14 say to the Court before the Court pronounces judgment in your
15 case?

16 THE DEFENDANT: No, your Honor.

17 THE COURT: Pursuant to the Sentencing Reform Act of
18 1984, it is the judgment of the Court that the defendant is
19 hereby committed to the custody of the Bureau of Prisons to
20 be imprisoned for a term of 151 months. The defendant shall
21 pay a special penalty assessment of \$100, due immediately.
22 The Court finds the defendant does not have the ability to
23 pay a fine, and therefore the imposition of a fine is waived.

24 Upon release from imprisonment, the defendant shall be
25 placed on supervised release for a term of 60 months. Within

1 72 hours of release from the custody of the Bureau of
2 Prisons, the defendant shall report in person to the
3 probation office in the district to which he is released.
4 While on supervised release, the defendant shall not commit
5 another federal, state, or local crime, shall not possess a
6 firearm as defined in Section 921 of Title 18, United States
7 Code, shall not illegally possess controlled substances, and
8 shall comply with the standard conditions which have been
9 recommended by the United States Sentencing Commission and
10 adopted by this court.

11 Further, the defendant shall refrain from any unlawful
12 use of a controlled substance. He shall submit to one drug
13 test within 15 days of release on supervised release and at
14 least two drug tests thereafter as directed by the probation
15 officer.

16 Now, there are nine special conditions listed on pages
17 21 and 22 of the presentence report.

18 Have you gone over those special conditions with
19 Mr. Starks?

20 MS. RUSK: Yes, your Honor. He has a copy.

21 THE COURT: Mr. Starks, have you read the special
22 conditions listed on pages 21 and 22 of the presentence
23 report?

24 THE DEFENDANT: Yes, your Honor.

25 THE COURT: And you understand them?

1 THE DEFENDANT: Yes, your Honor.

2 THE COURT: The Court adopts the special conditions
3 recommended by the probation officer on pages 21 and 22 of
4 the presentence report and imposes all of those listed as
5 special conditions.

6 Mr. Starks, you have a right to appeal from your
7 conviction if you believe that your guilty plea was somehow
8 unlawful or involuntary or if there's some other fundamental
9 defect in the proceedings that was not waived by your guilty
10 plea. You also have a right to appeal your sentence,
11 particularly if you think the sentence is contrary to law.

12 With few exceptions, any notice of appeal must be
13 filed within ten days from the entry of judgment in your
14 case. If you cannot afford the costs of an appeal, you'll be
15 permitted to proceed without the payment of costs. If you
16 cannot afford counsel, one will be appointed to represent
17 you. And if you request it, the clerk of the court will
18 prepare and file a notice of appeal on your behalf.

19 It is the Court's intention to authorize Mr. Starks to
20 appeal from his sentence in this case.

21 MS. RUSK: We agree, your Honor.

22 THE COURT: Anything else?

23 MS. PINGS: Your Honor, at this time the government
24 would move to dismiss Counts 2, 3, and 4 of the indictment.

25 THE COURT: That motion is granted.

1 MS. RUSK: And, your Honor, we would ask for a
2 placement in a California institution, if space is available,
3 for his family to visit.

4 THE COURT: The Court will recommend that Mr. Starks
5 be imprisoned in an institution in California insofar as that
6 recommendation is consistent with security classification and
7 space availability.

8 MS. RUSK: Thank you, your Honor.

9 MS. PINGS: Thank you, your Honor.

10 THE COURT: Let's take a ten-minute recess here before
11 we get to the last matter.

12 (Proceedings were concluded.)
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1 I certify that the foregoing is a correct transcript
2 from the record of proceedings in the above-entitled matter.
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KELLY O'HALLORAN, CSR #6660
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