

IN THE COURT OF COMMON PLEAS OF DAUPHIN COUNTY, PENNSYLVANIA
CRIMINAL DIVISION

COMMONWEALTH OF PENNSYLVANIA :
 :
 VS. : NO. CP-22-CR-4655-2008
 :
 BRETT COTT :

COMMONWEALTH'S SENTENCING MEMORANDUM

The Commonwealth of Pennsylvania, through Frank G. Fina, Chief Deputy Attorney General and Patrick Blessington, Senior Deputy Attorney General, respectfully submits this sentencing memorandum in the above-captioned matter.

FACTUAL SUMMARY

1. Defendant stands convicted of Conflict of Interest, a Felony (Count 4), Theft of Services, a Felony of the Third Degree (Count 28), and Conspiracy (to commit Conflict of Interest), a Felony (Count 42).
2. As described in the Information, said convictions pertain to illegal work on the campaigns of candidates Fred Vero, Thomas Tangretti, Wayne Fontana, Kim Tesla, Joe Schafer, Chet Orelli, and others.
3. In addition to those six named candidates, the below-referenced representative sample of documentary evidence establishes defendant's unlawful involvement in following fourteen "other" campaigns:
 - a) David Barasch. See trial exhibits C-308 and C-309, and Exhibit A.
 - b) Shawn Flaherty. See trial exhibits C-1523 and C-1525.
 - c) Mike Gerber. See trial exhibits C-166 and C-1351.
 - d) Michael McGeehan. See trial exhibit C-219.
 - e) Barbara McIlvaine Smith. See trial exhibit C-220.

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- f) Linda Minger. *See* trial exhibits C-178, C-180, C-186, C-188, C-1440 and C-1434.
 - g) Paul Reichart. *See* trial exhibit C-97.
 - h) Dante Santoni. *See* trial exhibits C-1461 and C-1529.
 - i) Tom Scrimenti. *See* trial exhibits C-161 and C-1410, and Exhibit B.
 - j) Josh Shapiro. *See* above-referenced trial exhibit C-1351.
 - k) John Siptroth. *See* trial exhibits C-212, C-214, C-215, C-225, C-1460, C-1469, C-1470, C-1471, C-1474, and C-1483.
 - l) Chelsa Wagner. *See* trial exhibits C-227 and C-1582.
 - m) Dan Weand. *See* trial exhibits C-143, C-1345, and above-referenced C-1351.
 - n) Christopher King. *See* trial exhibit C-1511.
4. Defendant's activities in the Kim Tesla judicial campaign, leading up to the 2005 primary election, are emblematic of the depth and breadth of his involvement in illicitly committing resources to the cause of winning elections. Defendant and his co-conspirators organized and implemented all aspects of the campaign, including: "all of the usual stuff... a plan... a budget... vote goals... mail, etc" (trial exhibit C-350); spreadsheets of targeted voters (*See* Exhibit C); endorsement letters and fundraising events (*See* Exhibit D); budgets, "walk schedules", and "lit drops" (*See* Exhibit E); fundraising list compilations and mail plans identifying 15,115 households and categories of "mail pieces" (*See* Exhibits F and G); drafts and finished products of "mail pieces" (*See* Exhibits H, I, J, K, and L); "live" and "robo" phone campaign calls (*See* Exhibits M, N, O, and P); and targeted mailings, coordinated with blast emails (trial exhibit C-381).
5. Tesla was defeated in that 2005 primary race by Deborah Kunselman, who went on to win the general election, thereby becoming a Common Pleas Court judge in Beaver

County. Due to the criminal conduct of Cott and his co-conspirators, Judge Kunselman was forced to spend as much as \$55,000 above and beyond what was traditionally necessary in such a campaign, in order to combat the taxpayer-funded onslaught of the Veon campaign team. *See Exhibit Q.*

6. As part of his unlawful efforts on the Fred Vero campaign in 2004, defendant and his cohorts utilized a subterfuge within their surreptitious campaign on Vero's behalf. Specifically, they formed a campaign committee which was used to support the third-party candidate, Mike Rock, and masked their involvement therein. *See trial exhibit C-329.* When Vero's opponent uncovered information apparently linking defendant to both the committee and Vero's campaign effort, defendant authored a deceitful denial to be used by the Vero campaign, and agreed with Foreman's suggestion that he should absent himself from the area of the Vero race until after the election. (*See trial exhibit C-159.*)
7. During the Tesla campaign in 2005, defendant referenced that subterfuge committee, as a possible launching pad for an ad attacking Judge Kunselman. *See Exhibit R.*
8. The quantification of the amount involved in the above-referenced Theft count is demonstrated through a representative sampling of the amount of resources consumed in the campaigning, and the logical extrapolation of that amount. The salary amounts for the Linda Minger campaign, alone, totaled \$5,340. *See trial exhibit C-1655, and Exhibit S.* The resources associated with the campaigns for the 2005 local and county primary elections amounted to \$7,611. *See trial exhibit C-1663¹.* The travel expense amount for the 2005 local and county general elections, standing alone, totaled \$5,729. *See Exhibit T.* The salaries involved in the 2004 Vero and Weand races amounted to \$8,439. *See*

¹ Only the compilation chart, which constitutes the first page of this exhibit, has been included here.

Exhibit U. Those four amounts, which are representative of merely a fraction of the resources consumed during the illicit activities in the above-referenced 20 campaigns, total \$27,119. During the relevant years, 2004 through 2006, defendant received \$223,366 in salary and \$39,195 in bonuses. *See* Exhibit V. The vast majority of defendant's employment time during those years was spent on campaign work. Defendant acknowledged as much, in an e-mail in which he stated, in reference to his campaign work, "This is what I live and get paid well for". *See* trial exhibit C-193. Thus, the actual theft amount clearly exceeds \$50,000, and most likely tops the \$100,000 mark.

9. In 1997, defendant was the executive director of the Kansas Democratic Party. During defendant's tenure, that organization was the subject of a United States Congressional investigation regarding campaign fund-raising and money-laundering. In November 1997, defendant stated that the investigation was a "partisan circus", and claimed that it was an attempt by Republicans to deflect attention from their own misdeeds.
10. After leaving Kansas, defendant was hired by the Wisconsin Senate Democratic Caucus, over the objection of its executive director, who was aware of defendant's experience in Kansas. The Wisconsin Senate Democratic Caucus was led by Senator Charles Chvala, who, during his tenure, served in both Majority and Minority Leader roles. During his employment there, defendant and other caucus employees, at the direction of Chvala, unlawfully utilized state resources for campaign purposes, in a fashion similar to that which occurred in the instant case, despite clear admonitions against such conduct in the Senate Policy Manual, and a memo, which were provided to defendant. In October 2005,

Senator Chvala was convicted of a felony offense related to that campaign work, and was also convicted of a felony related to unlawful political contributions.

11. In August, 2006, when defendant was working on co-defendant Veon's staff, he reminisced fondly about Senator Chvala, while encouraging his fellow staffers to do campaign work in an effort to gain the majority. Defendant stated, in an email: "If you think it is cool to work for MRV [Veon] as the Minority Whip, it is nothing compared to working for the Majority Leader. Before coming to PA, I worked for the WI Senate Majority Leader and it is a whole other world." *See* trial exhibit C-407.
12. Defendant's deep commitment to the illegal campaign culture, and his prominent role in the vast taxpayer-funded House Democratic Caucus criminal campaign enterprise, is aptly revealed in a wealth of evidence, including the following:
 - a) In an email, Veon castigates Todd Jewel, who was then the director of the Department of Information Technology ("DIT"), for distributing a memo concerning the prohibition of the use of legislative resources for campaign purposes. Veon called the memo "insulting" and stated that the caucus needed "to get rid of it". That email was sent to only 3 additional individuals: Michael Manzo, Jeff Foreman, and defendant. *See* trial exhibit C-330.
 - b) In preparation for the 2004 general election, defendant orchestrated "getting MRV [Veon] staff out" to work on various campaigns. Virtually all of Veon's capitol and district office staff members were directed to work on campaigns. *See* above-reference trial exhibit C-1351.
 - c) In a later email, defendant bemoaned DIT's "basic lack of knowledge and experience with political applications", and suggested that Todd Jewel should be replaced by Steve Keefer. Ultimately, Keefer did get that job. *See* trial exhibit C-346.
 - d) Cott stated, in an email to Veon staffers, "Every non-MRV [Veon] staff volunteer *not having to work* on MRV's race is free to work on a targeted race that will hopefully be one of seven we need to win the majority. *See* above-referenced trial exhibit C-407.

- e) Veon, in an email to House Democratic Campaign Committee members and operatives, directed that the “crunch time” briefing on the targeted races should be set up with defendant. *See* trial exhibit C-131.
 - f) Defendant, as part of orchestrating a detailed and voluminous campaign mailing operation to be carried out by Veon staffers, stated: “There are a ton of mailings in MRV’s office so the logistics of moving it across the street might overwhelm Pat [Cook] and his super dolley (sic)”. *See* trial exhibit C-763.
 - g) In the email regarding the initial round of campaign bonuses, Manzo stated to Veon that the bonus list “is a compilation of thoughts between Jeff [Foreman], Brett [Cott] and I”. Defendant, who is copied on the email, suggested adding an employee to the list. *See* trial exhibit C-16.
 - h) As late as January 5, 2007, after Veon had been ousted by the voters, defendant endorsed the continued use of an Office of Member Services plan involving campaign work, particularly opposition research. *See* trial exhibit C-629.
 - i) During the Schafer campaign, Veon, directed defendant and co-defendant Peretta-Rosepink to “lay out the rest of the plan, and let’s execute it”. *See* Exhibit W.
 - j) An email dated May 10, 2005, details defendant’s efforts in preparing a “script and a spreadsheet with 3793 voters with phones living in 2499 households” to be used for robo calls in the Schafer campaign. *See* Exhibit X.
13. Defendant was on the staff of Bill DeWeese after the investigation which resulted in the instant charges was initiated. In an email during that period, dated May 5, 2007, and directed to other DeWeese staffers, defendant states that a DeWeese staffer who was engaged in illicit fundraising should “be careful”, and should respond to a request regarding a campaign contribution through a campaign, rather than a legislative, email account. *See* Exhibit Y.
14. Defendant has extensively, and anonymously, utilized a blog entitled “Casablanca PA, Exposing the hypocrisy of Tom Corbett”, to defect blame and deny responsibility for his criminal conduct, and to attack and malign the investigative and prosecutorial process which resulted in his conviction.

15. In November and December 2009, defendant, in email communications directed to an immunized Commonwealth witness, vilified and demeaned cooperating co-defendants and prosecutors, all in an effort to negatively influence the testimony of that witness. *See* Exhibit Z.
16. As he left the courtroom after hearing the jury's verdict, defendant was asked what he thought when he heard the announcement of the first guilty verdict against him. Defendant responded: "That's it?". He further stated: "That's the best [Corbett] can do. I hope that helps him get elected governor. Good for him. That's all I have to say." *See* Exhibit AA.
17. Defendant is presently in violation of one of his bail conditions, since he has failed to notify the proper authorities of his change of address, as required by his bail bond. *See* Exhibit BB.

LEGAL AUTHORITY

In setting a sentence, "the court shall follow the general principle that the sentence imposed should call for confinement that is consistent with the protection of the public, the gravity of the offense as it relates to the impact on the life of the victim and on the community, and the rehabilitative needs of the defendant." *See* 42 Pa. C.S.A. § 9721. When imposing a sentence, a court is required to consider "the particular circumstances of the offense, and the character of the defendant", particularly his "personal characteristics and potential for rehabilitation". *Commonwealth v. Burns*, 765 A.2d 1144, 1150-51 (Pa. Super. 2000), appeal denied, 782 A.2d 542 (2001). "The trial court is vested with broad discretion in determining the defendant's sentence since the court is in the best position to view the defendant's character, displays of remorse, defiance or indifference, and the overall effect and nature of the crime."

Commonwealth v. Begley, 780 A.2d 605, 642-643 (Pa. 2001) citing *Commonwealth v. Ward, Jr.*, 568 A.2d 1242, 1243 (Pa. 1990). The trial judge similarly has such discretion in determining whether a given sentence should be consecutive to, or concurrent with another sentence being imposed. *Commonwealth v. W.H.M., Jr.*, 932 A.2d 155 (Pa. Super. 2007); *Commonwealth v. Rickabaugh*, 706 A.2d 826 (Pa. Super. 1997). Crimes do not merge for sentencing purposes unless the crimes arise from a single criminal act and all of the statutory elements of one offense are included in the statutory elements of the other offense. See 42 Pa. C.S.A. § 9765; *Commonwealth v. Pitner*, 928 A.2d 1104 (Pa. Super. 2007).

In making a sentencing decision consistent with the above standard, the sentencing court may receive and consider a wide array of relevant information including evidence of “other unlawful activity for which [defendant] was not charged, tried or convicted”. *Commonwealth v. Vernille*, 418 A.2d 713, 719 (Pa. Super. 1980). *In accord*, *Commonwealth v. Frank*, 577 A.2d 609 (Pa. Super., 1990). “A criminal defendant’s attitude, including a lack of contrition for his criminal conduct, is one of the proper criteria upon which a court may exercise its discretion in sentencing.” *Commonwealth v. Gallagher*, 442 A.2d 820, 822 (Pa. Super. 1982). See also *Commonwealth v. Eline*, 940 A.2d 421 (Pa. Super. 2007). (Sentencing court appropriately considered that defendant showed no remorse, and chose not to remedy his mistakes when he had the opportunity.) The sentencing court “must be apprised of comprehensive information to make the punishment fit not only the crime, but also the person who committed it.” *Commonwealth v. Goggins*, 748 A.2d 721, 729 (Pa. Super. 2000). The information properly received and considered by the court includes hearsay. It is the right of a court in sentencing to consider evidence “even though such information is obtained outside the courtroom from persons

whom the defendant has not been permitted to confront or cross-examine.” *Commonwealth v. Medley*, 725 A.2d 1225, 1230 (Pa. Super. 1999).

Facts regarding the nature and circumstances of an offense, which are not necessary elements of the offense for which a defendant has been convicted, are proper factors to be considered in deciding whether to sentence in the aggravated range, or even above that range. *Commonwealth v. Darden*, 531 A.2d 1144, 1149 (Pa. Super. 1987). Additionally, trial courts are permitted to use factors already included in the guidelines to sentence in the aggravated range “if they are used to supplement other extraneous sentencing information.” *Commonwealth v. Simpson*, 829 A.2d 334, 339 (Pa. Super. 2003). Justification for aggravated range sentences can be found in myriad factors in addition to those referenced above. *See e.g., Commonwealth v. Fullin*, 892 A.2d 843 (Pa. Super. 2006) (individual circumstances of defendant’s case atypical of the crime for which defendant convicted); *Commonwealth v. Guth*, 735 A.2d 709 (Pa. Super. 1999) (defendant’s attitude demonstrated that he would repeat his criminal conduct if given the opportunity); and *Commonwealth v. Dotter*, 589 A.2d 726 (Pa. Super. 1991) (the community to which victim belonged needed protection from defendant).

ARGUMENT

Any consideration of the gravity of defendant’s offenses, and the particular circumstances which separate them from those which are “typical”, begins with the fact that his criminal conduct encompassed, and infected, a minimum of *twenty* campaigns. Criminal involvement in *one* campaign could have been sufficient for a conviction of the charged offenses. Thus, there is immediately a multiplier of *twenty* in the assessment of gravity enhancement for sentencing purposes. Further, the criminal scheme was not limited to one, or even a few, aspects of the campaigns. It was all-encompassing. Defendant and his cohorts essentially took over

campaigns, directing and participating in every campaign component. The conspiracy was also unusual due to the staggering number of participants. Defendant and his co-conspirators drafted and/or enlisted a veritable army of state employees in their illicit enterprise. Defendant's particular role in the conspiracy and its implementation similarly demands sentencing enhancement. Specifically, he was one of the leaders, who was hired by Veon for the very purpose of serving as Veon's "campaign guy", the point man to run Veon's illegal operation in the Capitol.

A victim and community impact analysis similarly, and conclusively, demonstrates defendant's crimes are "atypical", and far more serious than "standard" Thefts, Conflicts and Conspiracies. The victimization here is multi-faceted. In illicitly assisting the Team Veon candidates, the defendant made a victim of the candidates who had actually filed nominating petitions, and engaged in campaigns. Judge Kunselman's narrative poignantly demonstrates that type of victimization. What is not so readily apparent is the victimization of the *potential* candidate, namely, someone who contemplates a candidacy, but is cowed by the vast taxpayer-funded resources of the Team Veon machine, and ultimately decides not to run. Thus, there are two distinct levels of victims when viewed simply from the candidate perspective. Beyond that, the voters are victimized, since they are deprived of a wider field of candidates, and, more importantly, a fair election contest. At its most elemental level, democracy is dependent upon a representative government chosen by the citizenry in a fair electoral process.

Since defendant criminally interfered with, and perverted, the electoral process, his crimes struck at the very heart of representative government. Thus, democracy, itself, was defendant's victim. Defendant's criminal conduct cut a swath which was extremely wide, in both democratic and geographic terms. It encompassed local, county and state elections in

electoral regions throughout the Commonwealth. Therefore, practically the entire citizenry of Pennsylvania was victimized. To add criminal insult to injury, the citizens were further victimized since it was their hard-earned tax dollars which were stolen by the defendants to fund the process through which they deprived those same taxpayers of one of their most fundamental rights – a fair electoral process.

A consideration of the “character” aspects of the sentencing analysis similarly calls for a sentence far stiffer than standard. Defendant is a remorseless, defiant repeat offender who is apparently incapable of contrition. He arrived in Pennsylvania having been steeped in criminal campaign culture experiences, and, despite having been exposed to the consequences of such conduct, forged ahead in it here. That, even independent of further character analysis, reflects the type of “attitude” which, as discussed in *Commonwealth v. Gunt, supra.*, demonstrates that defendant will repeat his criminal conduct if given the opportunity.

Defendant has consistently demonstrated, through both his charged and uncharged conduct, a propensity for dishonorable and deceptive behavior. At its core, the instant criminal enterprise involved stealth, deception, and denial. It perfectly matched defendant’s character. The aforementioned Rock subterfuge campaign committee episode epitomizes that. Defendant engaged in a sneak attack, involving multiple layers of deception, and when caught, implemented a denial strategy, and then ran and hid.

Throughout the course of all of the above-described events, defendant has consistently exhibited only contempt and disdain for anyone who deigns to hold him, or any members of his party, accountable for their conduct. The comment in Kansas, the lionization of his Wisconsin Senate leader, his use of the blog, his emails to the witness, his post-verdict comment to the press, and his failure to notify court authorities of his address change all exemplify an arrogant

contemptuousness which will undoubtedly render futile any non-punitive rehabilitative efforts. Thus, the only punishment which will appropriately “fit” both defendant and his crime, is a lengthy period of incarceration.

Defendant has a 0 Prior Record Score. The Offense Gravity Score (“OGS”) for the Theft is 7²; the OGS for the Conflict is a 5; and the OGS for the Conspiracy is also a 5. Thus, the sentencing guidelines are as follows.

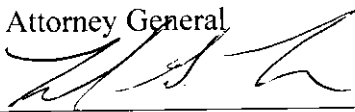
	<u>Standard Range</u>	<u>Aggravated Range</u>	<u>Mitigated Range</u>
- Theft	6 -- 14 months	12 – 20 months	RS – 8 months
- Conspiracy	RS – 9 months	3 – 12 months	RS – 6 months
- Conflict	RS – 9 months	3 – 12 months	RS – 6 months

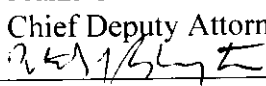
None of the three crimes merge for sentencing purposes.

CONCLUSION

Based on the foregoing, the Commonwealth respectfully submits that justice in this case can only be served through the imposition of aggravated range sentences for all three of the above-referenced crimes, to be served consecutively, and respectfully requests that defendant be sentenced in that fashion.

Respectfully submitted,
 THOMAS W. CORBETT, JR.
 Attorney General

By: 
 Frank G. Fina
 Chief Deputy Attorney General

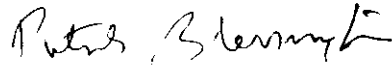
By: 
 Patrick Blessington
 Senior Deputy Attorney General

² Although the theft amount, as indicated above, most likely exceeds \$100,000, and would carry an OGS of 8, the Commonwealth recognizes that an attempt to definitely establish that amount would be somewhat less than a certainty, and is therefore willing to agree to a 7 OGS.

VERIFICATION

The undersigned hereby certifies that the facts set forth in the foregoing document are true and correct to the best of his knowledge, information and belief, subject to the provisions of 18 Pa. C.S. § 4904, relating to Unsworn Falsification To Authorities.

Dated: May 18, 2010



Patrick Blessington
Senior Deputy Attorney General

IN THE COURT OF COMMON PLEAS OF DAUPHIN COUNTY, PENNSYLVANIA
CRIMINAL DIVISION

COMMONWEALTH OF PENNSYLVANIA :
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 VS. : NO. CP-22-CR-4655-2008
 :
 BRETT COTT :

CERTIFICATE OF SERVICE

I hereby certify that I am this day serving a copy of the foregoing document upon the person and in the manner indicated below, which satisfies Pa.R.Crim.P. 575-576:

Personal Service

Bryan S. Walk, Esquire
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(Counsel for Brett Cott)

Dated: May 18, 2010



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