

1 UNITED STATES DISTRICT COURT
2 EASTERN DISTRICT OF NEW YORK

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4 UNITED STATES OF AMERICA, : 06-CR-00616
5 -against- United States Courthouse
6 : Brooklyn, New York
7

8 KARUNAKARAN KANDASAMY,
9 Defendant. : May 11, 2012
10 : Ten o'clock a.m.

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11 TRANSCRIPT OF SENTENCING
12 BEFORE THE HONORABLE RAYMOND J. DEARIE
13 UNITED STATES DISTRICT JUDGE

13 ATTORNEYS FOR GOVERNMENT:
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18 CHARLES ROSS, ESQ.

18 Also Present:
19 FRAN OBEID, ESQ.

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1 Proceedings recorded by mechanical stenography,
2 transcript produced by CAT.

3 THE CLERK: We are on this morning for a
4 continuation of sentence that began October 6, 2010. This is
5 United States versus Kandasamy. This is Docket No. CR-06-616,
6 Mr. Kandasamy is defendant number seven

7 Can I ask the attorneys please note your appearance,
8 beginning with counsel for the government.

9 MR. KAZEMI: Ali Kazemi for the government. Good
10 morning, Your Honor.

11 MR. ROSS: Good morning, Charles Ross for
12 Mr. Kandasamy.

13 THE COURT: Mr. Kandasamy, good morning.

14 Folks, please be seated.

15 THE CLERK: Just to note for the record, we have our
16 Tamil interpreter, Ms. Ashok with us this morning who has been
17 previously sworn.

18 THE COURT: All right. To say the least, this is a
19 continuation. As you might expect, I spent the better part of
20 the last couple of days starting from scratch, reading
21 everything that has been submitted, and there have been
22 extensive submissions, particularly from Mr. Ross and company,
23 which I had reread, including all the letters that support --
24 that accompanied the original submission, as well as the
25 transcript of our October 6, 2010 proceeding.

I guess technically we should begin by noting for

1 the record that there had been a disputed issue on the
2 guidelines. I ruled in a number of cases, and I think I may
3 have also insinuated here that I believe, given the Second
4 Circuit law, the application of the so-called terrorism
5 enhancement is an appropriate one. Of course, in this case
6 the government has permitted Mr. Kandasamy to plead guilty to
7 offenses that carry with them a maximum term that is ten years
8 below the lower end of that guideline range, a point that
9 Mr. Knox made repeatedly on various occasions. I am happy to
10 hear you, of course. It's been a long time. And with that
11 I'll turn it over to you Mr. Ross.

12 MR. ROSS: Judge, as Your Honor noted, we made
13 extensive submissions regarding the guidelines and
14 Your Honor's ruled on those issues in prior proceeding, so I'm
15 simply going to rely on the papers that we submitted to the
16 Court with respect to all of the guidelines issues. I don't
17 have specific arguments this morning that I want to either
18 raise again or try to go back over this morning.

19 THE COURT: Okay. Fair enough.

20 Anything further on the issue of sentence?

21 MR. ROSS: Yes, sir. On the issue -- on the general
22 issue of sentence, as Your Honor noted, tremendous amount of
23 material was submitted here, and obviously, Your Honor's been
24 over it and over it, gone back over, as you said, just over
25 the past couple of days. Obviously, if Your Honor has any

1 specific questions this morning about Mr. Kandasamy, I am
2 happy to answer them. There were lengthy proceedings before
3 this Court over a year and a half ago, and arguments were
4 impassioned on both sides. They were full of many, many
5 factual representations to the Court and the Court recalls
6 that that at that time I did not suggest to Your Honor that a
7 time served sentence should be imposed back over a year and a
8 half ago, but after I got done my argument before Your Honor,
9 Ms. Kellman came up to me and she said, Chuck, you were on
10 such a roll, you should have asked the Judge for time served
11 on that day. And as I recall it -- and I went back to the
12 sentencing transcript as well, Judge, and reread it -- and on
13 that day, Your Honor however commented that I put a
14 particularly favorable slant on my client's activities, and
15 that slant -- my advocate's slant may not been, Your Honor
16 opined on that day, completely supported by the record.
17 However, Your Honor did comment that in your opinion on that
18 day Mr. Kandasamy's conduct fell somewhere in between the
19 government's contentions that he was a terrorist leader of the
20 LTTE in the United States and in my mitigation arguments on
21 this day. Your Honor, obviously, I am an advocate. The Court
22 is wise.

23 THE COURT: We hope.

24 I see Ms. Kellman is here today to keep you honest.

25 ^ Here should I take this out MS. KELLMAN: When he

1 says the Court is wise, that he can credit me.

2 THE COURT: That is when you started smirking.
3 Laughing. Okay ^ here.

4 MR. ROSS: And if, indeed, Mr. Kandasamy's conduct
5 fell somewhere in between, it's that very, very difficult in
6 betweenness in the context in the case that Your Honor's
7 wrestled with so mightily and I think courageously throughout
8 the pendency of all of these matters, Your Honor's obviously
9 really struggled with this, and it's clear that the Court's
10 prior sentences of the three men that Your Honor already
11 passed sentence on reflected that struggle and reflected that
12 context.

13 Clearly, the Court's recognized the government's
14 right to bring these cases to enforce these laws and at the
15 same time Your Honor was quite concerned always with the
16 individuals that were before the Court, the motivations that
17 were involved here and the characters of each of the three men
18 that you've already passed sentence on, and clearly, the
19 sentences were merciful sentences, but here we are more than a
20 year and a half later, with Mr. Kandasamy and today -- and I
21 certainly hope that Mrs. Kellman does approve -- I am asking
22 Your Honor for a time served sentence on behalf of
23 Mr. Kandasamy. I'm asking for that time served sentence,
24 Judge, because he's been in jail for that -- more than a year
25 and a half since we last convened before the Court and that

1 additional time is time that he spent incarcerated, obviously,
2 in a jail. He continued to suffer and continued to be
3 punished since we last appeared here.

4 As the probation department has agreed, and said to
5 Your Honor, that time in jail for Mr. Kandasamy is tougher
6 time, it is a much tougher time for him to spend because his
7 health is awful. His health is still awful and that's a
8 reason why I'm asking the Court for time served.

9 He continues to suffer from Type 2 Diabetes, from
10 hypertension, from chronic pain. He still takes all the
11 medications for all the ailments we told the Court about first
12 time around, and Your Honor will recall Mr. Kandasamy came
13 very, very close to death from the infection caused by that
14 epidural abscess that he was treated for at Springfield. I'm
15 asking for time served today, Judge, because Mr. Kandasamy
16 grew up in Sri Lanka and was subjected himself and saw with
17 his own eyes the horrors that were committed by the Senegalese
18 government which have been documented now officially from a
19 variety of different sources.

20 We, the United States, granted him asylum when he
21 left because of what the Sri Lankan government was doing to
22 the Tamil people, and he came here and he made a life for
23 himself and his family. His family, Judge, is here today --
24 his, wife, his daughter, his brother, other friends and family
25 of the Kandasamy family who have been so incredibly supportive

1 of him throughout the pendency of this case.

2 I'm asking for time served, Judge, because at
3 essence Mr. Kandasamy is a simple hard-working man. He came
4 here, he had a variety of different jobs. He drove a cab, he
5 worked at a counter, he worked in a Dunkin' Donuts. He loves
6 his wife and he loves his daughter and he wants to be home
7 with them. Just -- I'm not going to rehash everything. I'm
8 not going to through everything. Your Honor has read our
9 submissions. They were extensive.

10 Mr. Kandasamy clearly became involved with the WTCC
11 and the TRO. He raised a lot of money to help his people, the
12 people who he loved, and clearly, he went too far. I've read
13 the prior sentencing transcripts and they reflect a tremendous
14 amount of work Your Honor has done and the tremendous amount
15 of reflection that Your Honor has put into this case. You've
16 balanced the government's right to bring these charges and
17 enforce these laws with individuals who have come before you
18 in the context of the case, with their backgrounds, and their
19 family, and their contributions and their motivations. In one
20 of those prior proceedings the Court cautioned against just
21 throwing the word terrorism out there, and the Court observed
22 that in these cases one size just simply doesn't fit all cases
23 or all individuals, and I know Your Honor's struggled to make
24 the punishment, and the sentence fit, and clearly, it's not a
25 one size fit all situation with Mr. Kandasamy either.

1 The Court knows how important the context here is
2 and has wrestled wisely with this, and it is a context,
3 Your Honor, and Your Honor knows this, that Mr. Kandasamy has
4 lived -- he's lived it throughout his life. He violated the
5 law and admitted to his violation. He's been punished
6 significantly for that. Separated from his family for over
7 five years, just suffered from horrible, horrible health
8 problems. He suffered. His family has suffered. I could go
9 on and on. The government could respond in kind. We could
10 have lengthy, lengthy arguments here today before the Court,
11 but in the end, to paraphrase a great jurist, there's been
12 enough suffering, I would suggest, Your Honor, here. There's
13 been enough suffering, and I would ask Your Honor to please
14 end my client's suffering. He's already been punished
15 sufficiently for his crimes and I ask the Court most
16 respectfully to please let him go home to his family today.

17 THE COURT: Thank you, Mr. Ross. I appreciate your
18 comments and appreciate your comments in the past, and
19 obviously, the passion you are bringing to this.

20 What does the government have to say today?

21 MR. KAZEMI: Thank you, Your Honor.

22 First it sounds like Your Honor has already made the
23 relevant rulings with respect to the guidelines. I would just
24 like to make clear the government's position is that the
25 terrorism enhancement applies, which Your Honor had mentioned

1 as well as several other enhancements that were recommended by
2 the probation department under 2M5.3(b)(1), as well as 3B1.1,
3 leading to an adjusted offense level of 41 criminal history
4 category of six and guidelines range of 360 to life.

5 Now, with respect to the appropriate sentence in
6 this case, as Your Honor is aware, I have taken over this case
7 from several prior assistants.

8 THE COURT: You have had a lot to read.

9 MR. KAZEMI: I have, and I'm just kind of echoing
10 Mr. Ross' comments. The case has been briefed extensively and
11 there's been extensive argument so, rather than sort of rehash
12 all of those arguments against, it sounds like the Court has
13 been briefed and the salient points have already been raised,
14 and the Court has considered them. So, rather than repeat all
15 those arguments, I would just ask again for a sentence of
16 20 years which is a statutory maximum but is below the
17 guidelines range in this case and a sentence of time served is
18 simply not appropriate for this particular defendant, given
19 his high ranking leadership for the LTTE leader of the WTCC.

20 THE COURT: All right. Mr. Kandasamy, what would
21 you like to say, sir?

22 THE DEFENDANT: (Reading): Judge Dearie, I once
23 again I want to express remorse for my crimes. As I have said
24 before, I love this country and I believe that its laws
25 deserve respect.

1 I know it's not an excuse but everything I did was
2 to support the Tamil people in the community I grew up in.

3 I was raised in a country where my family and I
4 lived in constant fear of being killed or jailed and tortured.
5 I watched the Tamil people suffer terribly at the hands of the
6 Sri Lankan government for many years. I cannot express how
7 painful and humiliating it was to feel so helpless and
8 defenseless.

9 My intention was only to help my people.

10 I have been in jail now for five years. I am
11 physically very sick and I do not know how many more years I
12 have. I miss my family so much and I know they miss me too.

13 Judge Dearie, I ask you to have mercy on me and on
14 my family and to let me go home to them.

15 Thank you for listening to me. I am ready to be
16 sentenced.

17 THE COURT: Thank you, sir.

18 Well, yes, it's been a struggle for me and no doubt
19 for everyone associated with the case, including,
20 particularly, the families.

21 I just want to make an initial comment. I don't
22 know that it's about the right of the government to bring
23 these charges. It seems to me the government has a
24 responsibility to bring these charges. We do not accommodate
25 any form of terrorism or support the terrorism here on U.S.

1 shores, and I believe these were important and compelling
2 cases. That said, yes, we have to pull back that sort of
3 emblazoned banner of terrorism and look at the case
4 specifically and the defendant particularly and that's where
5 the decision-making process gets so difficult. You know, part
6 of preparing I reread John Anderson's article in the New
7 Yorker back over a year ago, and a thought that occurred to me
8 is it is so unfortunate that apparently the international
9 community seems either unwilling or incapable of objective
10 fact finding on the issue applied to the Tamils and what has
11 happened in Sri Lanka. I don't know it would necessarily be
12 directly relevant to the question of sentencing to this man,
13 but it's clear from all accounts that this civil war involved
14 brutalities on both sides. Now that we have been so, in a
15 relative sense, intimately involved in this struggle, it
16 really does cry out for some independent reliable voice to
17 tell the full story. It is also somewhat disappointing,
18 apparently. I don't mean to get into the politics of this.
19 This Colombo government doesn't seem willing to give ground in
20 terms of the Tamil community, and although the war is over,
21 the conflict continues. That's disappointing. I don't think it
22 is humanitarians versus terrorists. It's not so simple. I
23 have very little doubt that Mr. Kandasamy's motivations were
24 largely humanitarian, if not exclusively humanitarian, but of
25 course, the ends do not always justify the means. He is

1 characterized as a leader. I guess to some extent there is
2 some support for that, but given the way I understand Tamil
3 hierarchy to operate largely out of Sri Lanka and given the
4 facts as reflected in the reports, I have some doubt as to
5 whether or not he enjoyed the usual latitude of leadership as
6 we know it. He was a fundraiser for sure. He had relationships
7 with important people in the hierarchy of the LTTE, that is
8 for certain, but given the unusual circumstances here and that
9 existed on the Island, in terms of LTTE being a de facto
10 government in the region, he's not alone. He's not alone.

11 He's almost 56 years old. This is his first offense
12 although, albeit, a very serious one. He does, indeed, have
13 documented serious and chronic illnesses. He has spent most of
14 the time -- is it MCC or MDC?

15 MR. ROSS: MDC, Judge.

16 THE COURT: At MDC save for four months stay at the
17 Springfield Medical Facility when things got very serious.
18 Time at MCC when you are in the best of health, or MDC when
19 you're in the best of health, is hardly ideal time or
20 experience, but add to it these chronic and serious physical
21 issues, I'm sure it's been a very difficult experience for
22 him.

23 He's led what appears to be an otherwise responsible
24 life as a father, as a husband, as a member of his community.
25 The letters attest to that in glowing terms.

1 So the question is what more is necessary to make
2 the point that the government does not tolerate support for
3 terrorism no matter what the ultimate objective may be. In
4 this man's case I believe justice has been served. I
5 appreciate the government's position. The government quite
6 rightly points out they could take a far harsher position when
7 it comes to this individual. I don't think the government's
8 sense of fairness, sense of justice would have permitted that,
9 and I appreciate the fact that, although they disagree with me
10 no doubt on what the appropriate sentence is, they recognize
11 that this is not a garden variety terrorism case.

12 I am going to impose, therefore, a sentence of time
13 served on both counts; \$100 special assessment; there will be
14 no fine; three years supervised release.

15 Is there anything else?

16 Are there open counts?

17 MR. KAZEMI: There's an underlying indictment. The
18 government moves to dismiss.

19 THE COURT: That application is granted.

20 Gentlemen, thank you for time.

21 Mr. Kandasamy, good luck to you and to your family.

22 MR. KAZEMI: Your Honor, just one issue. He did
23 plead to two counts. So I believe it would be \$200 special
24 assessment.

25 THE COURT: I think I said on both counts I think I

1 said on both counts --

2 MR. KAZEMI: Oh, you did?

3 THE COURT: But if I didn't, \$100 special assessment
4 on both counts totalling \$200.

5 MR. KAZEMI: I apologize.

6 THE COURT: Anything else?

7 MR. ROSS: Nothing further. Thank you.

8 THE COURT: Good luck, sir.

9 (Proceedings concluded as above set forth)

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